

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMIE LEIGH JONES,
PLAINTIFF,

v.

H-07-CV-2719
HOUSTON, TEXAS
JUNE 28, 2011
8:30 A.M.

HALLIBURTON COMPANY D/B/A
KBR KELLOGG BROWN & ROOT
(KBR); KELLOGG BROWN & ROOT
SERVICES, INC.;
DEFENDANTS.
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(Jury present)

THE COURT: Please be seated.

All right. You ready to resume?

MR. ESTEFAN: Yes, your Honor, if I may, please.

THE COURT: Yes.

MR. ESTEFAN: Plaintiff would call to the stand
Mr. Gabriel Andino.

THE COURT: Mr. Andino.

MR. ESTEFAN: I hope I said that right, Mr. Andino.

THE WITNESS: Yes.

THE COURT: You know the drill by now.

THE WITNESS: Yes, your Honor, I do.

THE COURT: Okay. Make your way forward.

THE CASE MANAGER: Do you solemnly swear the testimony
you're about to give in the matter now before the Court will be
truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, ma'am, I do.

THE COURT: You may inquire.

MR. ESTEFAN: Thank you, your Honor.

GABRIEL ANDINO, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. ESTEFAN:

Q. Ready?

A. I believe so, yes, sir.

08:33

1 Q. Good morning.

2 A. Good morning, sir.

3 Q. Would you state your name, please, sir.

4 A. My full name is Gabriel Jose Andino.

08:33

5 Q. Mr. Andino, of all the people that KBR could have chosen to
6 represent its company at this trial, they chose you. You
7 understand that, right?

8 A. Yes, I do.

9 THE COURT: Maybe the jury doesn't. In a case that

08:33

10 involves a claim against a corporation, typically the
11 corporation is asked to select one person who will attend the
12 trial and be the spokesman for the corporation in the
13 courtroom. Everybody understand that?

14 BY MR. ESTEFAN:

08:33

15 Q. If you need a drink, Mr. Andino, please --

16 A. Appreciate that. Thank you.

17 Q. So, for our purposes during this trial, you are KBR. Is
18 that correct?

19 A. Yes, sir, that's correct.

08:34

20 Q. Let's talk about KBR generally.

21 A. Yes, sir.

22 Q. Okay?

23 KBR makes its own rules about how it runs itself,
24 true?

08:34

25 A. That is true, sir.

08:34 1 Q. And it doesn't get any input from people like Jamie or any
2 other person who's applying for a job to work at KBR. Isn't
3 that right?

4 A. I think that's a relatively accurate statement, sir.

08:34 5 Q. Okay. Additionally, KBR literature, which I believe you're
6 familiar with, says, "Our people are our greatest asset."

7 You've seen that before, haven't you?

8 A. I've seen that and I've heard it many times, yes, sir.

9 Q. Yes, sir. I think it says, "Our people are our most
08:34 10 important asset."

11 Maybe I misstated that. Is it "our most
12 important asset"?

13 A. I've heard it different ways; but, in essence, our people
14 are our most important resource and assets, yes, sir.

08:34 15 Q. Yes, sir. And you agree with that statement, don't you?

16 A. I do.

17 Q. KBR sends all its employees to an orientation program right
18 here in Houston, up at Greenspoint Mall, don't they?

19 A. For deployment to the Middle East.

08:35 20 Q. Overseas.

21 A. Yes, sir.

22 Q. Yes. And can you describe for us what happens during an
23 orientation? Is it one big room with a bunch of tables in it,
24 or what does the room look like?

08:35 25 A. Within the Green Zone, it is one very large room

08:35 1 compartmentalized for different efforts that go on
2 simultaneously so that, if you have to do a medical screening,
3 you have the privacy related to that; if you have to do a
4 briefing of an administrative nature, you have an area to do
08:35 5 that.

6 We have an area where the employees -- or the
7 candidates, I should say, that are going through that process
8 have a place to sit and eat and drink coffee or water or
9 whatever. So -- but it's a very large area.

08:35 10 Q. And I understand that -- how long is this program, the
11 orientation?

12 A. Basically, it's a week long.

13 Q. I understand there's a lot of stuff going on there.
14 There's, I think, HazMat training. We've heard about that?

08:36 15 A. That's correct.

16 Q. And there's some other kind of safety training. I'm not
17 sure what all; but can you maybe enlighten us a little bit
18 about that, please?

19 A. There's all sorts of training that takes place. Part of it
08:36 20 is related to safety and the wellbeing of employees so that
21 they know the hazards with a particular area that they're going
22 into. Part of it is administrative in nature so that they
23 understand the proper procedures; for example, in filling out
24 their time sheet.

08:36 25 Part of it is, as Mr. Estefan said, related to

08:36 1 HazMat so that they know how to, you know, don't their what we
2 call "PPE," personal protective equipment gear if necessary.

3 Q. Thank you, Mr. Andino. And along with the training,
4 there's other stuff that comes along, which is the presentation
08:37 5 of a bunch of documents, some of which they sign?

6 A. Correct.

7 Q. And some of which they're given, like the Code of Business
8 Conduct, right?

9 A. Yes, sir.

08:37 10 Q. And the Code of Business Conduct is KBR's rules for
11 acceptable behaviors at work?

12 A. Correct, acceptable and unacceptable behavior.

13 Q. Well, that was my next question. It also outlines the
14 behaviors that aren't acceptable.

08:37 15 A. Yes, sir.

16 Q. True?

17 So, KBR employees leave the orientation knowing
18 what the rules are. That's a fair statement, isn't it?

19 A. At least they should be familiar with it by the time they
08:37 20 leave. It shouldn't be unknown to them, yes, sir.

21 Q. Yes, sir. In fact, if they want to work for KBR and be
22 deployed overseas, this orientation and this training they're
23 going through is mandatory?

24 A. Yes, it is, sir.

08:37 25 Q. It's also mandatory for employees to sign all the KBR

08:38

1 forms?

2 A. Correct.

3 Q. And initial where they're told?

4 A. Yes, sir.

08:38

5 Q. It's not as though the employee can cross out some part of
6 the employment agreement and say, "I don't really agree with
7 that." They can't cross it out, initial it, and say, "I don't
8 want that in my contract or my agreement." They can't do that,
9 can they?

08:38

10 A. I've never seen that happen, no, sir.

11 Q. So, employees sign the KBR employment contract, among other
12 things, just as KBR prepares it?

13 A. Yes, sir.

08:38

14 Q. All right. KBR designed the employment contract in a way
15 to protect itself to the fullest possible extent. Isn't that
16 true?

17 A. I don't know that that's the primary reason, but I know
18 that the policies are set so that it protects the company and
19 the employees.

08:38

20 Q. Well, for example, KBR's employment contract has an
21 arbitration clause in it, doesn't it?

22 A. Yes, sir.

23 Q. And that's in every KBR employment contract, right?

24 A. I don't know that to be true. I know that I have at times
25 signed contracts within the company, that have the arbitration

08:39

08:39 1 clause; but I don't know that it's for every contract.

2 Q. And it's for the arbitration of all employment related
3 disputes. That's what that arbitration clause pertains to,
4 doesn't it?

08:39 5 A. Yes, sir.

6 Q. Why does KBR not want its people, it's so-called most
7 important asset, why doesn't KBR want them to have their day in
8 court?

9 A. I think the intent is to have a process where employees can
08:39 10 voice their concerns through the arbitration process as opposed
11 to, as you said, a day in court.

12 Q. Well, is it just possible that KBR has a more important
13 asset than its people? Maybe its money?

14 A. I would not state that, no, sir.

08:39 15 Q. KBR doesn't allow its employees to opt out of the
16 arbitration clause in the contract, do they?

17 A. I don't believe that that's an option; but I don't know
18 that for sure, sir.

19 Q. Well, if arbitration was good for the employee, why not
08:40 20 give the employee the option of opting out of arbitration or
21 going to arbitration, as the employee chooses?

22 A. I can't answer that on behalf of the company.

23 Q. Well, let's talk about enforcing KBR policies and rules.
24 KBR and only KBR can decide whether or not it will enforce its
08:40 25 rules, true?

08:40

1 A. Yes, sir.

2 Q. Employees can tell KBR management about rule violations;
3 but the employees have no authority to enforce the rules, do
4 they?

08:40

5 A. I think all of us, as employees, have the responsibility to
6 enforce the rules to the extent of our position within the
7 company and our responsibility as employees.

8 Q. To enforce the rules, you first have to know what the rules
9 are. That's a fair statement, isn't it?

08:41

10 A. Of course.

11 Q. I mean, you can't enforce a rule you don't know about --

12 A. I understand.

13 Q. -- right?

14 KBR rules are the same everywhere; one set of
15 rules for all KBR employees, right?

08:41

16 A. By and large, that's a true statement. We do have some
17 exceptions.

18 Q. Okay. Can you think of any exceptions?

19 A. We did have an exception within the Green Zone when it came
20 to alcohol, initially while I was there. And later that policy
21 was changed.

08:41

22 Q. And, actually, you changed that policy?

23 A. I did, sir, yes, sir.

24 Q. And that change was made after Jamie's assault.

08:41

25 A. Yes, it was.

08:41

1 Q. And it was because of Jamie's assault.

2 A. That is not a true statement, sir.

3 Q. Okay. If KBR has rules but chooses not to enforce them,
4 that sends a clear and direct message to all employees, doesn't
5 it?

08:41

6 A. I would think that if we did not enforce our rules, it
7 would send a message to our employees, yes, sir.

8 Q. What message does it send?

9 A. It wouldn't be a good message, in my opinion. I think the
10 rules are intended to be enforced, and our company does that.

08:42

11 Q. Always?

12 A. I like to think that we do. We're not perfect, by no
13 means.

14 Q. No, I don't think anybody expects anybody or a company to
15 be perfect. I think that's an unreasonable standard.

08:42

16 Why even have a rule, Mr. Andino, if you're not
17 going to enforce it? I mean, is it just so KBR can avoid
18 responsibility when something bad happens, by saying, "Look, we
19 have a rule against that"?

08:42

20 A. What's the question, sir?

21 Q. Why even have a rule if you're not going to enforce it? I
22 mean, is it just that KBR --

23 A. We had rules, and we enforced them.

24 Q. Right. But those rules are something you guys can show
25 anybody who says, "Oh, you're going to get in trouble."

08:42

08:42 1 "Oh, no, we had a rule. We had a rule."

2 A. I don't believe that's the purpose of the rules we had in
3 place, no, sir. We had a reason to have rules. It was for the
4 benefit of our employees, for the wellbeing of our employees;
08:43 5 and we enforce them.

6 Q. Were any of those rules for the benefit and wellbeing of
7 KBR?

8 A. If we talk specifically to a rule, we could argue that
9 point. But by and large, I think the company -- as an equal
08:43 10 employment opportunity type company, I believe we do care for
11 our people. And by virtue of our policies and procedures and
12 our leadership, we show that.

13 Q. Let's talk about now what KBR knows and what candidates
14 don't know.

08:43 15 A. Yes, sir.

16 Q. Okay? KBR knows or should know the rules that it creates
17 for itself, fair?

18 A. Yes, sir.

19 Q. KBR knows whether or not it has chosen to enforce those
08:43 20 rules?

21 A. Of course.

22 Q. -- right?

23 KBR knows what's happening on the ground, so to
24 speak, you know, out in the camps in the Middle East and stuff,
08:43 25 with regard to its rules and the enforcement of those rules;

08:44 1 KBR knows that, right?

2 A. Right.

3 Q. Before working for KBR, a candidate doesn't know KBR's
4 rules, fair?

08:44 5 A. Unless they worked with us before, I would not expect them
6 to know that, no, sir.

7 Q. And someone applying for a job at KBR does not know and
8 cannot find out whether or not KBR chooses to enforce its own
9 rules, can they?

08:44 10 A. Okay.

11 Q. I mean, is that a fair statement?

12 A. I think that's a fair statement.

13 Q. And this person cannot make KBR enforce its own rules,
14 true, this candidate?

08:44 15 A. If they're not an employee, I don't think they have much of
16 a say in the matter. Once they become an employee, I do think
17 they have a say in the matter.

18 Q. A person cannot find out on his or her own what's really
19 happening on the ground at the KBR camps. One of these
08:44 20 candidates who's applying for a job with KBR can't possibly
21 know what's happening in the camps, can they?

22 A. It depends on what level of detail we're talking about. I
23 mean, the work that we do in places such as Iraq and
24 Afghanistan is very common knowledge. Among the world, for
08:45 25 that matter, in the news, what's going on is told on a daily

08:45 1 basis.

2 So, as far as what's going on in camps, I think
3 that is -- depends to what extent we're talking about, what
4 knowledge we're talking about the employee would want to know,
08:45 5 or the candidate would want to know.

6 Q. Things like whether KBR enforces its rules with regard to
7 health or safety, things like that, a candidate has no way to
8 find that out independently from what KBR tells them. Isn't
9 that true?

08:45 10 A. To some extent, I think that's fairly accurate, sir.

11 Q. Hence, the candidate has to rely on what KBR's
12 representation of that is. Isn't that a fair statement?

13 A. That's a true statement, yes, sir.

14 Q. If KBR chooses to not tell a candidate the truth about
08:45 15 important things, such as things that affect the applicant's
16 health or safety, and the applicant relies on KBR's
17 representation or KBR's silence as to that rule, KBR is
18 committing fraud on that applicant. Isn't that true?

19 MS. VORPAHL: Your Honor, I'm going to object. First
08:46 20 of all, it calls for a legal conclusion. Secondly, he's gone
21 outside the scope of his pleadings.

22 May we approach?

23 *(At sidebar with all counsel)*

24 MS. VORPAHL: The only thing that he's pled is fraud
08:46 25 by omission. So, I'm not going to let him sit and talk about

08:46 1 any other variety of fraud. And his question asked about more
2 than just fraud by omission, and I'm not going to let it be
3 tried by consent.

4 MR. MCKINNEY: Also, Judge, it's argumentative --

08:47 5 MS. VORPAHL: And it calls for legal conclusion.

6 MR. MCKINNEY: -- assumes facts not in evidence. It
7 assumes that they have proved their case and assumes now
8 that -- he says, "Since we've proved our case, don't you agree
9 that you committed fraud?" That's not a proper question to a
08:47 10 fact witness.

11 THE COURT: Your response?

12 MR. ESTEFAN: This is KBR. Fraud in the inducement to
13 enter the employment contract and fraud in the inducement to
14 arbitrate are two of the theories that we are establishing
08:47 15 proof of, your Honor.

16 MS. VORPAHL: By omission is the only way that you
17 have alleged it.

18 MR. MCKINNEY: How can there be fraud on the
19 arbitration? It's in the contract. Every adult who signs a
08:47 20 contract is conclusively presumed to have read the contents of
21 the contract. If it's in the contract, it can't possibly be
22 fraud.

23 THE COURT: You all make good points.

24 I think you've covered everything you need to
08:47 25 cover with this witness. I would suggest we move on. I really

08:47 1 think you made your point.

2 MR. ESTEFAN: I intend to move on, your Honor.

3 (*In open court*)

4 BY MR. ESTEFAN:

08:48 5 Q. Okay. Mr. Andino, I want to go back to KBR's options.

6 A. Yes, sir.

7 Q. Okay?

8 KBR could choose to inform, truthfully, its
9 candidates, could it not?

08:49 10 A. I believe that's what we do, yes, sir.

11 Q. All right. And an example of that on something like sexual
12 harassment might be the way that some college campuses do it,
13 where they, for example, provide statistics on sexual assault
14 to people who are applying to that college. KBR could do that,
08:49 15 couldn't they?

16 A. I suppose that's an option, yes, sir.

17 Q. And that way, a person thinking about coming to work for
18 KBR could make an informed decision about whether they wanted
19 to work for that company, fair?

08:49 20 A. Yes, sir.

21 Q. That's not unreasonable, is it?

22 A. I think that's just -- that's one approach to making that
23 information known.

24 Q. Well, KBR informs applicants about other risks. Like when
08:49 25 they go into the Green Zone or into the Middle East, they

08:49 1 inform them about things like mortars and IEDs and insurgent
2 attacks and things like that, right?

3 A. We do, yes, sir.

4 Q. And, so, why does KBR disclose these risks, those risks
08:50 5 I've just talked about and things like it, to the applicants?

6 A. Because of the environment we're in, that is something that
7 is likely to occur.

8 Q. And these risks are outside risks, you know, from people
9 other than KBR. So, that would not obviously expose KBR to any
08:50 10 liability, would it?

11 MS. VORPAHL: Your Honor, objection, calls for a legal
12 conclusion. I don't believe this witness can answer that.

13 THE COURT: Yeah. I think that does go outside the
14 area of this witness' competence. Let's ask another question.

08:50 15 BY MR. ESTEFAN:

16 Q. Well, in fact, telling employees about outside risks and
17 not telling them about inside risks is more dangerous to those
18 employees, isn't it?

19 A. I believe we tell employees about all risks in general. We
08:50 20 don't necessarily distinguish between outside and inside.

21 Inside risk could be something as basic as insurgents attack,
22 which is something that unfortunately has occurred -- or it had
23 occurred early during the war in Iraq. So, to my knowledge, we
24 don't distinguish between outside and inside.

08:51 25 Q. Well, if they're led to believe, if candidates are led to

08:51 1 believe that you've told them about all the risks since you
2 went to the trouble of telling them about the outside risks,
3 some of the risks, then they let their guard down with respect
4 to the inside risks. Isn't that fair?

08:51 5 A. I don't think that's a correct statement in the context of
6 our environment in such as places in Iraq or Afghanistan.

7 Q. Okay.

8 A. We don't let our guard down when we're inside a camp, as
9 you stated.

08:51 10 Q. Yes, sir. You're employed by KBR?

11 A. Obviously.

12 Q. How long have you worked for KBR?

13 A. It will be 20 years in August, sir.

14 Q. In July of 2005, what was your position with KBR?

08:52 15 A. I was the project manager for what we call -- called at the
16 time Task Order 49, which was United States Mission Iraq in
17 support of the Department of State.

18 Q. So -- wow, that's a lot. But I think, from that, what I
19 take is "in support of the Department of State" means your
08:52 20 client, KBR's client, where you work, is the Department of
21 State?

22 A. No. The client was the United States Army. The customer
23 was the Department of State.

24 Q. Okay. How -- is the Department of State somehow part of
08:52 25 the army? Is that how they became the customer?

08:52 1 A. No. Under the umbrella of the -- what we have come to know
2 as the LOGCAP mission, there were several different task orders
3 issued, depending on the customer. One of the customers was
4 the Department of State. Another customer could have been
08:53 5 Coalition Forces. So, it was just a way of segregating support
6 to different customers.

7 Q. Understood. Thank you, Mr. Andino.

8 As the project manager for -- and I believe you
9 said it was -- was it Camp Hope or was it LOGCAP III?

08:53 10 A. No. We called it -- USMI was the acronym that we went by,
11 United States Mission Iraq, which I know is somewhat of a
12 misnomer; but it was in support of the Department of State.

13 Q. As the project manager, you were responsible for the safety
14 of all KBR employees on the project, true?

08:53 15 A. I believe that's one of my primary responsibilities, was
16 the safety and wellbeing of our employees, yes.

17 Q. Would you agree, Mr. Andino, that having a rule that's not
18 enforced is worse than having no rule at all?

19 A. I would believe that's true, yes, sir.

08:53 20 Q. Why is that, sir?

21 A. Well, if you have a rule and you don't enforce it, it sends
22 a message to your employees that you don't believe in that
23 rule.

24 Q. Could it encourage other employees to say, you know, "I
08:54 25 know there's a law against speeding, but the cops aren't

08:54 1 pulling me over; so, I'm going to speed," for an analogy?

2 A. I think some employees could interpret it that way, take
3 that position.

4 Q. While you were the project manager at Camp Hope, KBR had a
08:54 5 security department there. Isn't that true?

6 A. We did have a security department, yes, sir.

7 Q. And the main responsibility of KBR's security department
8 was the safety and wellbeing of the employees?

9 A. Correct.

08:54 10 Q. Now, it's important for you, in your position of project
11 manager, to know KBR policies and procedures, isn't it?

12 A. At least be aware of them.

13 Q. KBR had a zero tolerance policy on drugs, right?

14 A. We would not tolerate drugs as -- as -- yes.

08:54 15 Q. Except for alcohol, which you've explained there was --
16 that rule --

17 A. Well, no. With regards alcohol, we would not tolerate
18 alcohol in the workforce during -- you know, during the work
19 day.

08:55 20 Q. Yes, sir. But there was a thing called General Order
21 Number 1.

22 A. There was.

23 Q. And that was a "no alcohol within the camp," right?

24 A. Well, I think it's important to understand the greater
08:55 25 context of General Order Number 1.

08:55

1 Q. Please enlighten us.

2 A. It was something established by the military --

3 Q. Yes, sir.

4 A. -- for all forces within Iraq. But within the Green Zone,

08:55

5 which was, you know, a small city of sorts where the Department
6 of State was located, along with force headquarters, military
7 force headquarters, that General Order Number 1 with regards to
8 alcohol was an exception policy.

9 Q. Okay. So, let me just see if I can get this straight. If

08:55

10 you worked for KBR in the Green Zone, it was okay during
11 non-working hours to consume alcohol?

12 A. As with the rest of the people within the Green Zone, yes,
13 sir.

14 Q. Even the military?

08:56

15 A. Yes, even the military.

16 Q. Okay. KBR also has had a zero tolerance policy with regard
17 to sexual harassment, right?

18 A. Yes, sir.

19 Q. KBR also had policies prohibiting cohabitation, right?

08:56

20 A. We would not allow cohabitation.

21 Q. Right. And you heard Mr. Kara Hall testify from that seat
22 that cohabitation, which is spending the night in a place other
23 than your own bed, with someone else, is a termination offense?

24 A. I heard Mr. Hall say that, yes, sir.

08:56

25 Q. Do you agree with that?

08:56

1 A. I do.

2 Q. KBR also has policies prohibiting relationships between
3 supervisors and subordinates, right?

4 A. That is true. We do not tolerate that.

08:57

5 Q. And you've learned, Mr. Andino, through your training,
6 education, and experience that people act differently away from
7 home than they do at home, right?

8 A. Through my experience, I have seen that in some employees,
9 yes, sir.

08:57

10 Q. And you're familiar with the barracks at Camp Hope, aren't
11 you?

12 A. I am.

13 Q. Some of the walls in the rooms don't go all the way up to
14 the ceiling. Isn't that true?

08:57

15 A. My recollection is that they did not go up completely to
16 the walls, yes, sir.

17 Q. And you would agree --

18 A. But I've heard --

19 Q. I'm sorry.

08:57

20 A. -- during this trial that some folks recall it going to the
21 wall. So, it may have been different than the walls we're
22 talking about.

23 THE COURT: You mean the ceiling?

24 THE WITNESS: Right, going to the ceiling. Thank you,
08:57 25 Judge. The walls going to the ceilings, yes, sir.

08:57

1 BY MR. ESTEFAN:

2 Q. A company should not punish people who report sexual
3 harassment, right?

4 A. We do not retribute against employees that report sexual
5 harassment.

6 Q. I mean, if you did, that would be retaliation, right?

7 A. Correct.

8 Q. Punishing people who report sexual harassment would tend to
9 reduce the reporting of sexual harassment, true?

10 A. I believe that's a true statement, yes, sir.

11 Q. And the same goes for sexual assault?

12 A. I believe that's a true statement, yes, sir.

13 Q. Now, the KBR zero tolerance policy on sexual harassment was
14 not enforced, was it?

15 A. I believe we enforce all our policies, including sexual
16 harassment.

17 MR. ESTEFAN: May I have, Bill, please -- I'm going to
18 need Ms. Loewe to turn the screen -- Exhibit 2. These are
19 all -- I think they're attachments to his deposition, which
20 have been -- they're plaintiffs' --

21 MS. VORPAHL: I don't have that.

22 MR. ESTEFAN: I'll show it to you.

23 MS. VORPAHL: It's your Exhibit Number 2.

24 MR. ESTEFAN: Our Exhibit Number 2.

25 Don't put it up yet until they see it.

09:00 1 MS. VORPAHL: I have it, Ron. I'm sorry if you're
2 waiting on me.

3 MR. ESTEFAN: That's all right. I wanted to let you
4 know I'll be using 2, 3, 4, and 5. Okay?

09:00 5 MS. VORPAHL: You're going to ask about 2 first?

6 MR. ESTEFAN: 2 is now, whenever you're ready.

7 MS. VORPAHL: Good. I am certainly ready.

8 MR. ESTEFAN: Would you please put it up, Bill?

9 I don't know. Is there any objection?

09:00 10 MS. VORPAHL: No, there's no objection.

11 MR. ESTEFAN: I guess it's now 80 -- mark it 84. Is
12 that our next number?

13 MS. VORPAHL: Okay. This is going to be
14 Plaintiffs' 84?

09:00 15 MR. ESTEFAN: Plaintiffs' 84, yes.

16 MS. CATES: Why wouldn't you leave it Exhibit 2?

17 MR. ESTEFAN: Well, because it was a plaintiff only
18 exhibit and it hadn't been admitted yet. So, we can leave it 2
19 if --

09:00 20 MS. CATES: Let's just leave them --

21 MS. VORPAHL: That's certainly what we've done with
22 ours, is just leave them -- whatever number.

23 MR. ESTEFAN: Okay. Plaintiffs' 2 then is offered.

24 MS. VORPAHL: No objection.

09:01 25 *(Sotto voce discussion between Mr. Estefan and case manger)*

09:01 1 MR. ESTEFAN: Could you turn it to the third page of
2 that exhibit, please?

3 MS. VORPAHL: Does the witness understand where he's
4 supposed to go?

09:01 5 THE WITNESS: I don't.

6 MR. ESTEFAN: May I approach the witness, your Honor?

7 THE COURT: You may.

8 THE WITNESS: Tab 3 you said?

9 MR. ESTEFAN: No, sir, Tab 2. May I see the outside
09:02 10 of the binder, Mr. Andino?

11 Yes. So, it's plaintiffs' and it's Tab 2 and
12 it's this e-mail right here and I'm on the last page of that,
13 sir.

14 THE WITNESS: Thank you, sir.

09:02 15 BY MR. ESTEFAN

16 Q. And if you could -- is that the third page of 3?

17 A. Yes. Yes.

18 Q. Okay.

19 MR. ESTEFAN: And if you could blow this section up
09:02 20 right here in the middle, this paragraph below -- there you go,
21 right there.

22 Thank you, Bill.

23 BY MR. ESTEFAN:

24 Q. This is an e-mail, as you can see --

09:02 25 A. Yes, sir.

09:02 1 Q. -- Mr. Andino, that originates from, I believe, Anthony
2 Bryant?

3 A. Correct, sir.

4 Q. To Remo Butler and Daniel Maguire. And the actual date of
09:03 5 the e-mail is a little above it, and can you see that on there?

6 A. Yes, sir.

7 Q. July -- July 5th, 2005?

8 A. Yes, sir.

9 Q. And in this e-mail, Mr. Bryant is reporting that an
09:03 10 employee, Mr. King, has, I believe in his words, "gone
11 overboard again"?

12 A. Yes, sir.

13 Q. Who is Remo Bryant?

14 A. Remo Bryant was the Iraq project manager, my immediate
09:03 15 boss.

16 Q. Okay. So, it says here that, "Craig King, USMI
17 maintenance, has gone overboard again. Gabe already has a copy
18 and I believe is taking steps to correct this."

19 And that Gabe that they refer to there, that's
09:03 20 you?

21 A. Yes, sir.

22 Q. And then it says, "Craig has really crossed the line here.
23 His actions go way beyond simple sexual assault. They
24 disgustingly border upon criminal." Do you see that?

09:04 25 A. I do.

09:04 1 Q. So, by the time this e-mail was sent on July 5th, you
2 already had -- July 5th, 2005, that is, you already had notice
3 of Mr. King?

4 A. Yes, sir.

09:04 5 Q. And what his actions were, right?

6 A. I did.

7 Q. All right.

8 MR. ESTEFAN: And then I would like to go to
9 Exhibit 2, please. This is Plaintiffs' -- I think it would be

09:04 10 3. I'm sorry --

11 MS. VORPAHL: Different exhibit. Okay.

12 MR. ESTEFAN: I'm sorry, Plaintiffs' Exhibit 3.

13 BY MR. ESTEFAN:

14 Q. Which is the next tab over.

09:04 15 A. Tab 3?

16 Q. Yes, sir.

17 A. Yes, sir.

18 MR. ESTEFAN: Could you blow that up for us, the text
19 where it says -- from the "from" line and down to the --

09:05 20 Mr. Andino's name there, all the way from the "from" line at
21 the top, Bill, so we see who it's from, please.

22 BY MR. ESTEFAN:

23 Q. So, this is an e-mail from you?

24 A. Yes, sir.

09:05 25 Q. And this was actually sent six days before Jamie arrived in

09:05

1 Iraq, July 19th, 2005, right?

2 A. The e-mail was sent July 19th, yes, sir.

3 Q. Yes, sir. And on that date you were writing to Ron
4 Boutwell. And, so, I guess we need to know who Ron Boutwell
09:05 5 is. Can you tell us who he is, please?

6 A. Absolutely. He was my human resources manager.

7 Q. Would he be in charge of, for example, Ms. Armstrong, who
8 we heard testify yesterday by videotape?

9 A. Ms. Armstrong worked for Mr. Boutwell, yes, sir.

09:06

10 Q. So, in this e-mail, if you read down, it says, "While in
11 both cases there were no witnesses that affirmed the
12 harassment, I reminded Craig what sexual harassment is and how
13 the company views this" --

14 THE COURT: Slowly, slowly.

09:06

15 BY MR. ESTEFAN:

16 Q. -- "and how the company views this. I also suggested that
17 he refrain from situations that may lead to another harassment
18 type scenario." Right?

19 A. Yes, sir.

09:06

20 Q. Now, when Mr. King was complained about, he was not fired
21 and he remained a KBR employee. Isn't that true?

22 A. That's correct, sir.

23 Q. And do you recall on another occasion Tony Bryant telling
24 you about a woman who had been sexually harassed and she was
09:07 25 afraid to come forward and report it?

09:07 1 A. I believe we're talking about the same employee, sir.

2 Q. Okay. Well, that would be under Tab -- I guess what would
3 be 4 there, perhaps.

4 I'm sorry. It might be 5. I'm one off between
09:07 5 the deposition -- it's the one that's on the KBR letterhead and
6 it starts off with Ms. Tinova.

7 A. Shqipe Tinova.

8 MS. VORPAHL: Your Honor, may we approach? I mean, if
9 he's going into Exhibit 5, it's not only hearsay but hearsay
09:07 10 within hearsay.

11 THE COURT: Let's approach.

12 MS. VORPAHL: Thank you.

13 *(At sidebar with all counsel)*

14 MS. VORPAHL: This is the exhibit. And it is this
09:07 15 woman's out-of-court statement, and it contains statements that
16 Craig King supposedly made. He can certainly ask the witness
17 his understanding of what the complaint was and he's -- and the
18 steps he took, but he can't put in a unilateral out-of-court
19 statement that contains hearsay and hearsay within hearsay.

09:08 20 THE COURT: Okay. So, in the first instance, this
21 comes in because it's a business record and because it's a
22 statement by the witness. Is that right?

23 MR. ESTEFAN: And it's a statement by a party
24 opponent. He is KBR for all intentions in this trial, Judge.

09:08 25 THE COURT: I understand. Okay. Then let's go to the

09:08

1 next level.

2 MS. VORPAHL: I don't believe this is a business
3 record.

4 MS. HOLCOMBE: It's not a business record, your Honor.
5 There's no foundation for a business record, and there's no
6 affidavit --

7 THE COURT: Okay. It comes in for several reasons.
8 One is it is a statement made by a party opponent while acting
9 in the role that was envisioned for him by the employer. So,
10 it comes in under 801.

11 MS. VORPAHL: The person that wrote this is not a
12 party opponent. This is written by some third party.

13 THE COURT: Well, I thought he was -- she's not an
14 employee?

15 MS. VORPAHL: She was an employee, yes.

16 MR. ESTEFAN: And this goes to the notice that KBR had
17 and what they did about it. It's a critical issue.

18 MR. MCKINNEY: First of all, it's --

19 MS. VORPAHL: I mean, it's absolute hearsay and
20 hearsay within hearsay. Neither of these people are here.

21 THE COURT: Well, now, I see the relevance. It's
22 before the incident in question. It does go to notice. We
23 need to go through this one by one.

24 MS. HOLCOMBE: Well, I was going to say, your Honor,
25 with regards to the -- first, with regards to what Ms. Tinova

09:09

09:09 1 says, even under party opponent, it wouldn't come in under
2 party opponent. It's not dealing with the actual scope of the
3 employment of KBR. This is dealing with outside statements
4 that are made to her somewhere when she is out and about. This
09:10 5 is not --

6 THE COURT: Well, but it's the conduct of a KBR
7 employee with respect to another KBR employee.

8 MR. MCKINNEY: And that's why I have a problem with
9 it. This does not make the issue of whether Jamie Leigh Jones
09:10 10 was or was not sexually assaulted more or less likely. There's
11 no evidence that my man knows anything about this activity.

12 THE COURT: This doesn't go to your person at all, I
13 don't think. I think it goes to KBR.

14 MR. MCKINNEY: But everything KBR is being sued for in
09:10 15 this case is derivative of the claim against my person; so,
16 this is highly prejudicial to Charles Bortz.

17 It doesn't actually prove anything in this case
18 that would make Ms. Jones' allegations in this case more or
19 less likely. And to the extent that there is any residual
09:11 20 probative value, it is grossly outweighed by the inflammatory
21 nature of these allegations which are -- as crude as the
22 language is, as offensive as the language, it is does not
23 involve non-consensual touching, does not involve sexual
24 assault --

09:11 25 THE COURT: It has a non-consensual sexual approach,

09:11 1 though.

2 MR. McKINNEY: There's no doubt about that. But it
3 doesn't make any issue -- the fundamental and core issue in
4 controversy in this case more or less likely.

09:11 5 THE COURT: No. I disagree. I think it's evidence
6 that Halliburton did have some notice. It went to this witness
7 who was hired -- it goes to notice whether or not it's the
8 truth of the matter.

9 MR. McKINNEY: It shows notice that there are cretins
09:11 10 in this world. That is a known fact. I don't know that --

11 MS. HOLCOMBE: Your Honor, the notice requirement or
12 the notice element can be satisfied with simply asking
13 Mr. Andino what he knew as a representative of KBR today, what
14 his knowledge was of this incident, what -- the actions he took
09:12 15 and the notices that he --

16 THE COURT: Well, he can certainly do that; but, you
17 know, there's no -- having done that, there's no prohibition on
18 introducing an exhibit that goes with the inquiry.

19 Okay. Now -- okay. Craig -- Craig's statement,
09:12 20 as quoted in here, is definitely hearsay. Is there an
21 exception that would make it admissible?

22 MR. ESTEFAN: Craig is a manager. He's management
23 level.

24 THE COURT: No. That takes care of --

09:12 25 MR. ESTEFAN: Admission.

09:12 1 MR. MCKINNEY: It's still outside the course and
2 scope.

3 THE COURT: That takes care of the statement itself
4 but not Ms. Tinova's statement of his statement. I mean, we do
09:12 5 have two levels of hearsay here.

6 MR. MCKINNEY: The connecting link is hearsay.

7 THE COURT: So, what I want to know about is on what
8 grounds do we admit Ms. Tinova's statement quoting this Craig
9 person.

09:13 10 Let me have a word with my colleague. Just a
11 minute.

12 MS. VORPAHL: Thank you. Should we return to our --

13 THE COURT: No. Stay there.

14 MS. VORPAHL: Okay.

09:13 15 *(Sotto voce discussion at sidebar with court staff)*

16 THE COURT: Well, I mean, I can't get over the
17 hearsay. You can certainly ask whether Mr. Andino was made
18 aware of specific incidents of sexual harassment and what he
19 did about them. But I can't figure another way it comes in.

09:16 20 I mean, I do think the evidence is probative, but
21 I can't get around hearsay on this. You can try to prove it up
22 as a business record, but that would only take care of one
23 level of hearsay anyway.

24 Sorry.

09:16 25 Whose is this?

09:16 1 MS. VORPAHL: Oh, I believe that's mine. Thank you.

2 (*In open court*)

3 MR. ESTEFAN: May I continue, your Honor?

4 THE COURT: You may.

09:16 5 BY MR. ESTEFAN:

6 Q. Mr. Andino, without reading out loud anything that's in
7 that document that you have, Ms. Tinova complained about
8 Mr. Craig King, on two separate occasions, sexually harassing
9 her. Is that true?

09:17 10 A. In this one document she --

11 Q. Please don't read it out loud.

12 A. No. No, I won't. She highlights two separate incidents,
13 yes, sir.

14 THE COURT: It's involving the same person?

09:17 15 THE WITNESS: Yes.

16 THE COURT: Involving the same alleged harasser?

17 THE WITNESS: Ms. Tinova regarding Mr. Craig King.

18 THE COURT: Tell me again what Mr. King did. What was
19 his function, what was his assignment?

09:17 20 THE WITNESS: Mr. King was our maintenance manager,
21 and Ms. Shqipe Tinova was one of our property employees.

22 THE COURT: Okay. Thank you.

23 BY MR. ESTEFAN:

24 Q. And I believe that both of those harassment allegations
09:18 25 made by Ms. Tinova -- the first one was May 5th, 2004, correct?

09:18

1 A. Yes, sir, that's what she states.

2 Q. And the other one was July 4th, 2005?

3 A. That is the second incident, yes, sir.

4 Q. And in spite of those two separate complaints, Mr. King was
5 not fired?

6 A. The -- I guess it's first important to understand that this
7 was an e-mail that was -- or document that was sent to me with
8 both incidents at once. I was not at Camp Hope as the project
9 manager during May of 2004. I certainly was there by July,
10 2005. And upon notification of the incident, it was looked
11 into and I took action.

12 Q. Which means that your predecessor also didn't fire
13 Mr. King.

14 A. No. What I am stating is that she -- after a year is when
15 she made that first incident known.

16 Q. Okay. The woman that Mr. King harassed filed a formal
17 complaint, true?

18 A. She did.

19 MS. VORPAHL: Objection, your Honor. I mean, it
20 assumes facts not in evidence. The witness has testified -- I
21 don't think that it's clear that Mr. King harassed anybody. I
22 mean, it's alleged that he harassed somebody.

23 THE COURT: Okay. Just walk the witness through
24 that -- a more detailed inquiry, Mr. Estefan.

25 BY MR. ESTEFAN:

09:19 1 Q. When she filed this complaint, she was afraid, isn't she?

2 A. That's what Mr. Anthony Bryant says in his e-mail. That's

3 not what Shqipe says.

4 Q. Well, and she said to Mr. Bryant the reason --

09:20 5 MS. VORPAHL: Your Honor, I object. I mean, this is

6 getting in the back door what you said could not come through

7 the front door. He's getting ready to quote.

8 THE COURT: No, he's not. He's not going to do that.

9 BY MR. ESTEFAN:

09:20 10 Q. She said the reason she didn't tell anyone was that she was

11 new, scared to cause trouble, and worried about being fired,

12 right?

13 A. If you want me to read what she says, I will be glad to do

14 that.

09:20 15 THE COURT: No, no, no.

16 BY MR. ESTEFAN:

17 Q. No, please don't.

18 But within that exhibit -- or the one we started

19 with --

09:20 20 A. I'm looking at the exhibit that shows the two incidents.

21 If you're looking at a different document, then please point me

22 to that.

23 Q. If you look at the back page of that one --

24 A. Yes, sir.

09:20 25 Q. -- it says in Ms. Tinova's words, "I did not want to report

09:20 1 these incidents, but I am afraid if I do nothing it will
2 continue and we will -- and he will continue to sexually harass
3 me."

4 Do you see that?

09:21 5 A. I do see that.

6 MS. VORPAHL: Your Honor, same objection. This is
7 hearsay. And he's now reading from a document that you said
8 that we were not going to admit.

9 MR. ESTEFAN: Only because of another issue, Judge,
09:21 10 not because of that.

11 THE COURT: Well, I think that that limited statement
12 is a statement by a party opponent. I don't think it's outside
13 the scope of her employment, and I don't think it's unduly
14 prejudicial. So, I'm going to allow it.

09:21 15 Generally speaking, ladies and gentlemen, there
16 are -- well, there are many ways to slice up evidence that is
17 offered in a court of law. We have tried to be faithful about
18 keeping out statements that are introduced referring to
19 someone's words spoken out of court when that witness is not
09:22 20 here to testify, if the statement is being used to show the
21 truth of the matter asserted.

22 However, some statements are made and they don't
23 go to the truth of the matter asserted but go to whether notice
24 reached a certain person or a certain corporation.

09:22 25 In other words, for these purposes we can't say

09:22 1 whether the actual statements of narrative are true or not
2 true. We just don't know. But we can accept the statement as
3 notice, some form of notice, maybe inadequate notice, maybe
4 insufficient notice, maybe even misleading notice. But do you
09:22 5 understand the distinction I'm drawing?

6 If someone reported to me that the jury room was
7 producing toxic fumes, that would be notice to me even though
8 it doesn't prove that there are really toxic fumes in there.
9 Does that -- I don't think I did a very good job explaining
09:23 10 that. Do you understand at all what I'm talking about?

11 All right. Thank you.

12 MR. ESTEFAN: Thank you, Judge. May I continue?

13 THE COURT: Yes, you may.

14 BY MR. ESTEFAN:

09:23 15 Q. Mr. Andino, you remember Ms. Jo Frederiksen's testimony
16 from that chair in this courtroom. Do you remember that?

17 A. I do in part, yes, sir.

18 Q. She was -- she testified that she was sexually harassed by
19 a project manager in 2004, didn't she?

09:23 20 A. I believe she may have stated that.

21 Q. Then, after she reported that harassment, her room was
22 searched. Do you recall her testifying to that?

23 A. I don't recall that her room was searched as a result of
24 her allegations.

09:23 25 Q. There have been numerous women who have come forward to

09:23 1 report sexual harassment at KBR. Isn't that true?

2 A. I don't know of what "numerous" means in your mind. I know

3 we've had incidents of sexual harassment reported, as we've

4 seen already, yes.

09:24 5 Q. And several -- I mean, I can -- do you remember Misty

6 Brannon reporting it?

7 A. I don't know Misty Bryan.

8 Q. "Brannon."

9 A. I do not know that.

09:24 10 Q. Shana Lord?

11 A. I do not know that employee either.

12 Q. Julie McBride?

13 A. I don't know that employee either.

14 Q. Catherine Oravits?

09:24 15 A. I don't know that employee.

16 Q. Regina Prayer?

17 A. I don't know that employee.

18 Q. Tracy Barker?

19 A. I do know that employee.

09:24 20 Q. And you heard Jamie Armstrong's testimony yesterday, I

21 think, by video, that she said if any sexual harassment

22 happened and was complained of she would have heard about it

23 because she was in human resources. Do you remember that?

24 A. If it would have been -- if the complaint would have been

09:24 25 made, then, more than likely, HR or employee relations

09:24 1 department would have heard about it, depending on how the
2 allegation was reported.

3 Q. Yes, sir.

4 A. Yes, sir.

09:25 5 Q. And I'm trying to reconstruct the testimony as I recall it.
6 I believe Mr. Coin said from that stand that ER, employee
7 relations, would investigate sexual harassment if they were
8 available but, if they weren't, human resources would do it.
9 Is that accurate?

09:25 10 A. I think it depends on the availability of resources. We
11 would -- one way or the other, the company would have a
12 representative investigate it.

13 Q. Yes, sir. And Jamie Armstrong just yesterday testified
14 that if there was a sexual harassment complaint human resources
09:25 15 and specifically her, she would have been aware of it. Not
16 employee relations, she. Was that a factual statement by
17 Ms. Armstrong?

18 A. I don't think it's completely factual in the sense that
19 employee relations did do investigations and it's very possible
09:25 20 that HR may not have known about it, at least not Jaime
21 Armstrong in her capacity. It's possible that her manager may
22 have known about it.

23 Q. Mr. Andino, there was no minimum drinking age for alcohol
24 consumption in Camp Hope on July 25th, 2005, was there?

09:26 25 A. If you want to imply that we didn't have a policy that

09:26 1 stated if you're a minor that you cannot drink, we did not have
2 that, no, sir.

3 Q. Yeah. Because there was no age limit. In other words, if
4 you're 18 and you're over there in Iraq, in the Green Zone, you
09:26 5 can drink in the Green Zone, right?

6 A. We did not have a policy that stipulated age.

7 Q. Right.

8 Jamie was taken to the hospital in Camp Hope,
9 where an army doctor did the rape kit examination, right?

09:26 10 A. Yes.

11 Q. And then, after the rape kit examination was done, two KBR
12 security men took custody of that rape kit?

13 A. That is correct, sir.

14 Q. And you met personally with Jamie Jones on the evening of
09:27 15 July 29th, didn't you?

16 A. I met with Ms. Jones the evening after the allegation was
17 made.

18 Q. Yes, sir. The allegation was made the morning of
19 July 28th. You met with her the evening of July 29th.

09:27 20 A. That is correct, sir.

21 Q. And when you met with her, you said she looked shaken to
22 you, didn't you?

23 A. I used words to that effect, yes.

24 Q. So, that's more than 24 -- 36 hours after, more or less,
09:27 25 she reports that she's still shaken when you observe her?

09:27

1 A. That was my observation then.

09:27

2 Q. Yes, sir. Now, Ms. Jones, Jamie Jones, was bringing a
3 server card -- when she was coming into the country on
4 July 25th into Camp Hope, she was bringing a server card,
5 wasn't she?

09:28

6 A. I did not know that as -- as -- I mean, I've come to learn
7 that; but I did not know that at the time of the incident.

09:28

8 Q. Okay. Jamie transferred from -- I believe you told us
9 about LOGCAP and USMI, and I don't really -- I'm not real clear
10 on what all the distinctions are there. But she did transfer
11 from LOGCAP after two days, to USMI on the morning of
12 July 27th, didn't she?

09:28

13 A. I don't know all the details of how she came in-country
14 other than she arrived on the 25th and came to our camp on the
15 27th. And what -- whether that was initially as a result of a
16 direct hire for our project or a transfer, I don't know the
17 details of that.

09:29

18 Q. Yes, sir. But you know she was transferred over to USMI on
19 the --

20 A. I know that she traveled in-country through our Baghdad
21 International Airport and that she was brought over to USMI.

22 Q. Okay. And there's a higher security clearance to work at
23 USMI than there is at LOGCAP, right?

24 A. Well, a security clearance is a security clearance. And
25 it's only a secret clearance that is given to civilian

09:29

1 employees.

2 Q. Okay.

3 A. So, I don't know that that statement is -- is accurate,
4 sir.

09:29

5 Q. Okay.

6 A. I'm sorry.

7 Q. No, that's all right. I appreciate you giving honest
8 answers.

9 I want to look at something -- changing gears

09:29

10 now, I want to go to Joint Exhibit 187, please.

11 MR. ESTEFAN: And this is already in evidence because
12 it's a joint exhibit. And I think I need the last page of this
13 one.

14 The last page, Bill. Is that the last page?

09:30

15 Okay. And I need the last -- the very -- the
16 numbers at the top there and the headings. Okay.

17 BY MR. ESTEFAN:

18 Q. Now, this is in the joint exhibit binder, Mr. Andino. And,
19 so, Ms. Loewe can probably get that for you or --

09:30

20 A. For an exhibit?

21 Q. Yes, sir.

22 A. In another binder?

23 Q. Yes, sir, it is.

24 THE WITNESS: I'm not sure what I'm looking for. So,
09:30 25 thank you, Stephanie.

09:31

1 MR. ESTEFAN: I have a copy --

2 MS. VORPAHL: 187. I'm happy to give the witness my
3 copy if you want to do that.

4 MR. ESTEFAN: Is that all right?

09:31

5 MS. VORPAHL: That's okay. I mean, I --

6 MR. ESTEFAN: Oh, she's got it.

7 MS. VORPAHL: Oh, all right.

8 *(Discussion off the record)*

09:32

9 MR. ESTEFAN: Bill, could you go back to Page 1, the
10 very first page?

11 Thank you, Ms. Loewe.

12 BY MR. ESTEFAN:

13 Q. Mr. Andino, you may have to figure a way to pull that
14 microphone closer to you now that that binder is there. I'm
15 sorry about that.

09:32

16 A. Yes, sir.

17 Q. All set?

18 Okay. On Page 1, what we're looking at here
19 is a -- I believe it's a six-page document, perhaps, that says
20 it's the KBR, Inc.'s Consolidated Statements of Income. Do you
21 see that?

09:32

22 A. I do, sir.

23 Q. And, then, right below that, at the very top --

24 MR. ESTEFAN: At the very, very top, that little
25 section at the top, Bill, in the middle.

09:32

09:32 1 Yes, sir.

2 BY MR. ESTEFAN:

3 Q. This is in the millions, except for the per-share data.

4 So, we've got to add six zeros to all the numbers we see that
09:32 5 are anything other than the shares --

6 A. Yes, sir.

7 Q. -- right?

8 So, now if you'll turn to the very last page of
9 that exhibit --

09:33 10 MR. ESTEFAN: And, Bill, if you would, too.

11 BY MR. ESTEFAN:

12 Q. And these columns here, they cut off on the prior page; but
13 I will represent that the number on the right-hand side, the
14 two-point -- 2,204, where it says "Total Shareholders' Equity,"
09:33 15 that's from December 31st, 2010. Is that fair? Is that how
16 you read it, too?

17 A. That's what you state. I'll take your word for it, yes,
18 sir.

19 Q. And that number really is -- that's the net worth of KBR on
09:33 20 December 31st, 2010, right?

21 A. I'm not a financial expert. I'm sorry. But --

22 Q. Oh, I know. I'm asking you because you're KBR for this
23 trial. So -- but that's KBR net worth as of December 31st,
24 2010, and that number is \$2,204,000,000, true?

09:34 25 A. Yes, sir.

09:34 1 Q. The number to the left of that -- the number to the left is
2 KBR's net worth as of March 31st, 2011, three months later.
3 And KBR's net worth is \$2,289,000,000. Do you see that?
4 A. I do.

09:34 5 Q. That's a difference of \$85 million in those three months,
6 in net worth?
7 A. Okay.

8 Q. Fair?
9 A. I take your word for the math.

09:34 10 Q. Okay. I want to briefly move back to disciplinary actions.
11 If disciplinary actions aren't taken when there are KBR rule
12 violations, people get the message that they can get away with
13 things, right?
14 A. I think some people can -- would draw that conclusion.

09:35 15 Q. And you heard testimony throughout this trial that
16 Mr. Bortz, a KBR employee, in fact, spent the night with his
17 girlfriend, which is cohabitation, and he wasn't fired for
18 that, right?
19 A. He was not fired because at the time that that incident
09:35 20 occurred I was not aware objectively that that had occurred.

21 Q. Yes, sir. You were aware objectively that Mr. Bortz spent
22 the night with Jamie Jones because --
23 A. That is not a correct statement, no, sir.

24 Q. Well, there was a big investigation into them spending the
09:35 25 entire night together and all the things that went on that

09:35 1 night and Mr. Bortz going to -- out walking her out to the bus
2 the next morning and all that. And, so, all that was part of
3 the investigation; and yet he wasn't fired for that either, was
4 he?

09:36 5 A. Yes, there was an investigation done by the Department of
6 State. I was not privy to the results of that investigation.

7 Q. Well, there was a KBR investigation before there was a
8 Department of State investigation, right?

9 A. Within hours of the allegation of rape being made on
09:36 10 July 28th --

11 Q. Yes, sir.

12 A. -- the Department of State took over that investigation.
13 So, within hours, I mean, there was only limited information
14 that we were able to gather.

09:36 15 Q. How many hours?

16 A. Roughly speaking, seven at most.

17 Q. So, the timeline -- does the notification of KBR begin --
18 what you're talking about, the notification by Jamie to KBR,
19 does that start when she goes to the clinic and sees Kristen
09:37 20 Rumba; or does that start after she's released from the CASH
21 and escorted to the trailer?

22 A. I was notified of the rape allegation the morning of
23 July 28th, mid to late morning, between 10:00 and 12:00.

24 Q. So, that seems to coincide with either the time that Jamie
09:37 25 was in the clinic, the KBR clinic, or when she's over at the

09:37

1 CASH. Does that seem about right?

2 A. It's my understanding that she went to the CASH after she
3 went to our clinic.

4 Q. Yes, sir.

09:37

5 A. So, I mean, as far as exact times, I honestly do not
6 remember.

7 Q. Okay.

8 A. But as a point of reference, I know it was the morning of
9 July 28th when the allegation was made; and I was informed

09:37

10 immediately upon that allegation being made to our
11 medical/HR department.

12 Q. Yes, sir. The State Department took over the investigation
13 because this happened sort of -- I guess for lack of a better
14 term -- on their turf. Is that why they took over?

09:38

15 A. Our leadership informed us that that would be the -- the
16 way it should be handled because it's a criminal offense and
17 they would be better prepared for that.

18 Q. When Jamie was leaving Camp Hope, she left on a Little
19 Bird. Isn't that right?

09:38

20 A. I don't know exactly what type of aircraft she left. I
21 know that we have documentation that states that we were making
22 coordination efforts to have her depart on a Black Hawk
23 military aircraft, which is something that we would coordinate.
24 I mean, that's the only way you can move on it.

09:39

25 But I've also seen that, at the last minute, the

09:39 1 Department of State offered up their aircraft services, which
2 would have been a Little Bird, yes, sir.

3 Q. So, she actually left on the Little Bird?

4 A. I did not see her leave; so, I don't know that for a fact.

09:39 5 But either a Black Hawk or a military aircraft or Department of
6 State aircraft. She did leave in a helicopter. There's no
7 doubt about that.

8 Q. Right. Now, you got an e-mail, you were copied on an
9 e-mail from Tommy Shook?

09:39 10 A. Yes, sir.

11 Q. On the morning, I believe -- or I'm not sure what date this
12 is. It looks like it's July. The 29th was the preceding
13 e-mail. But in that e-mail he told you about Jamie being on a
14 Little Bird when she left.

09:39 15 A. Okay. If you want to point me to that e-mail, that's fine.

16 Q. I think it's Plaintiffs' -- gosh, I don't know if it's 9 or
17 10.

18 A. I'll be glad to --

19 MS. HOLCOMBE: It's 12.

09:39 20 BY MR. ESTEFAN:

21 Q. 12, Plaintiffs' 12.

22 A. Different book, I guess?

23 MS. VORPAHL: Is it 9 or 12?

24 MR. ESTEFAN: It's 12 in the exhibits but it was 9 --

09:40 25 MS. VORPAHL: Okay. That's good. You can get yours

09:40

1 back, and I'll use this.

2 MR. ESTEFAN: Can you enlarge the -- that's not the --
3 yeah, go to the last page, please.

4 Should be the fourth page, I think. Yes. No.

09:40

5 That -- that's not what I am looking for. There's one before
6 that. I might have to use the overhead to do it.

7 See if you can get Page 3. Here's what I am
8 looking for specifically, Bill. I have it. See if you can get
9 that page. If not -- you know what?

09:41

10 MS. VORPAHL: Are we still on Plaintiffs' 12?

11 MR. ESTEFAN: I think so. I'm going to -- it may be
12 that that's -- is that the right exhibit, or is it 9? I don't
13 know why I have 9. It might be 10. Hold on.

14 In any event, if I could have the overhead, the
15 Elmo instead of that, I'll just do it this way.

09:41

16 MS. VORPAHL: What is the exhibit now? Is it part of
17 12?

18 MR. ESTEFAN: I think it's part of 12.

19 MS. VORPAHL: Can I see it?

09:41

20 MR. ESTEFAN: It's what I just handed you. You handed
21 it back.

22 *(Sotto voce discussion between Mr. Estefan and Ms. Vorpahl)*

23 MR. ESTEFAN: It's not admitted. I won't show it till
24 it is.

09:42

25 MS. MORRIS: Is it 9, then?

09:42 1 MR. ESTEFAN: It's 9.

2 And specifically, Jo, it's just that first
3 paragraph at the top.

4 Any objection if I offer it as, I guess,
09:43 5 Plaintiffs' 9?

6 MS. VORPAHL: Yes, it is Plaintiffs' 9; and I have no
7 objection.

8 MR. ESTEFAN: Your Honor, Plaintiffs' 9 is offered
9 without objection.

09:43 10 THE COURT: Admitted without objection.

11 MR. ESTEFAN: Thank you.

12 If you can -- no, that's not it either. Why are
13 we not getting the right exhibit?

14 I'll just do it again on the overhead. There we
09:43 15 go. All right.

16 BY MR. ESTEFAN:

17 Q. You see there, Mr. Andino, on Plaintiffs' 9 that I put on
18 the screen, the third line down --

19 A. Yes, sir.

09:43 20 Q. -- where it says -- and actually, it starts off on the
21 second line, "Tomorrow, 31 July 2005, the DOS will transport
22 her, a female KBR/HR escort, and the DOS agent by a dedicated
23 Little Bird to the BIAP military terminal for a 12:30 show
24 time."

09:44 25 A. I see that.

09:44 1 Q. And at the top of this e-mail, it's from Tommy Shook; and
2 it was sent to Mr. Maguire and Mr. Russell and copied to you
3 and Mr. Goodgine.

4 A. Yes, sir.

09:44 5 Q. Do you see that?

6 Does that refresh your recollection about how
7 Jamie left Camp Hope?

8 A. That refreshes my memory as to what the plan was, yes.

9 Q. Yes, sir. Okay. I want to also show you an e-mail string
09:44 10 that's been -- we've talked about a couple of times during this
11 trial. It's the one between Jamie Jones and Pete Arroyo. Do
12 you remember that one? We've seen it a few times.

13 A. There's several.

14 *(Sotto voce discussion between Mr. Estefan and Ms.*
09:45 15 *Holcombe)*

16 MS. VORPAHL: These have already been admitted. We
17 just don't know what exhibit number they are. But if you want
18 to ask about them --

19 MR. ESTEFAN: Mr. McKinney, do you need a copy?

09:46 20 MR. MCKINNEY: I'm sure I don't.

21 BY MR. ESTEFAN:

22 Q. Okay. The only thing I want to ask about, Mr. Andino --

23 MR. ESTEFAN: Is it okay to talk about?

24 MS. VORPAHL: Does he have a copy of them?

09:46 25 MR. ESTEFAN: I don't believe so, but I'm going to

09:46 1 show them on the overhead. And it's not really a substantive
2 question really much.

3 MS. VORPAHL: Do you mind if I let him have my paper
4 copies? I think it's sometimes easier.

09:46 5 MR. ESTEFAN: May I take it to the witness, your
6 Honor?

7 THE COURT: You may.

8 BY MR. ESTEFAN:

9 Q. Mr. Andino, I'm going to hand you -- this is one, and
09:46 10 here's a separate one. And I would like you to -- what I am
11 going to do is line these up for you. Okay?

12 A. Yes, sir.

13 Q. And the reason I'm lining them up is because this is this.
14 Okay?

09:46 15 A. Okay.

16 Q. Do you see what I am talking about, sir?

17 A. I do.

18 Q. And all I want to ask you about, about this e-mail, this
19 KBR e-mail here --

09:46 20 A. Yes, sir.

21 Q. -- is right there -- these have the same words, "The girls
22 hate me here." Do you see that?

23 A. I do, sir.

24 Q. But what they -- what's different about them -- and we've
09:46 25 seen this e-mail once before -- on this side over here, the 7

09:47 1 was right up next to the 5. Do you remember that?

2 A. I do, sir.

3 Q. Now, on the one to the right, that's the one that's got the
4 10:43 time on it.

09:47 5 A. Yes, sir.

6 Q. But there's also some other differences between these
7 e-mails, if you happen to notice. The "from," the "sent," the
8 "to," and the "subject" is double spaced on the one on the
9 right and it's single spaced on the one on the left. Do you
10 see that?

11 A. Yes, sir.

12 Q. Do you also see that the "the," the word "the" on the one
13 on the right starts further over to the left --

14 A. I do, sir.

09:47 15 Q. -- than the "the" on the one on the left starts?

16 Okay. Do you have any knowledge about how these
17 e-mails got like that?

18 A. The one on my left is the e-mails as they occurred
19 in-country.

09:47 20 Q. Yes, sir.

21 A. The one on the right is an e-mail that was appended and
22 forwarded to Houston and printed by somebody in Houston. And
23 at the point that it was printed, all those changes and
24 characteristics would occur --

09:48 25 Q. Okay.

09:48

1 A. -- including the time difference.

2 Q. So, all the other e-mails in this thread didn't go back and
3 forth to Houston but just that one did?

4 A. No. The e-mail that we're talking about on my right
09:48 5 includes everything below it; but the very top e-mail, which is
6 the one that says, "The girls hate me" and has the highlighted
7 changes that you've talked about, to include the time
8 difference of nine hours, is what would have been modified, if
9 you will, electronically by virtue of the person printing that
09:48 10 in Houston. It's just something that happens.

11 Q. Okay.

12 A. And, I mean, there's --

13 Q. And the text would have been moved over, too, the "the"
14 would have been moved over and all that?

09:48 15 A. I can't explain why that happens. It just does.

16 Q. Okay. KBR's profit depends on its image with its client.
17 Isn't that true?

18 A. I think, in part, it -- it may be part of it, you know, or
19 whether or not we do a good job reflects our image.

09:49 20 Q. Right. And KBR has a money motive to keep things that are
21 bad under wraps. Isn't that true?

22 A. That's not true at all, sir, no.

23 Q. Not true at all, no truth in that?

24 A. Absolutely not.

09:49 25 MR. ESTEFAN: I'll pass the witness.

09:49 1 THE COURT: Okay. Would anybody like a break now?

2 THE WITNESS: I can use one.

3 THE COURT: A lot of people would.

4 Would all please rise for the jury?

09:49 5 *(Jury not present)*

6 THE COURT: Please be seated.

7 You may step down.

8 Didn't we have Mr. Arroyo's testimony that made a
9 different point about when he received that? Didn't he say he
09:50 10 received it on -- no?

11 MS. HOLCOMBE: He did. He testified in his
12 deposition, your Honor, that was played, that he recognized
13 sending that -- or sorry -- receiving that at 7:43 a.m., that,
14 "The girls hate me." So --

09:50 15 THE COURT: But on July 29th, right?

16 MS. HOLCOMBE: Yes, your Honor.

17 MR. McKINNEY: July 28th.

18 MS. HOLCOMBE: 28th. Sorry. July 28th.

19 MS. VORPAHL: But it was part of the string of
09:50 20 e-mails. He didn't say --

21 THE COURT: The 28th?

22 MS. HOLCOMBE: Yes, your Honor, that he recognized
23 receiving it and he remembered seeing these e-mails and that
24 this is how they want. So --

09:50 25 MR. McKINNEY: Moreover, there's a direct in-context

09:50 1 response that follows.

2 THE COURT: All right. Somebody may try to clear that
3 up, then.

4 MS. VORPAHL: We certainly can do that, your Honor.
09:50 5 It's exactly nine hours.

6 THE COURT: It's your call. I just wondered.

7 MS. VORPAHL: Yes.

8 THE COURT: And on the -- I went back to your
9 complaint, with my clerk's help; and the issue of
09:50 10 representations that were made of fraud that was committed, it
11 does look to me on Page 29 that plaintiff did allege as
12 follows, "Jamie Jones relied upon misrepresentation of fact
13 regarding the safety measures for women when she entered into
14 the contract of July 21st, 2005."

09:51 15 I mean, I think it was more than just fraud by
16 omission.

17 MR. RUNIONS: Your Honor, could you tell me which
18 paragraph you're looking at?

19 THE COURT: Yes. Subparagraph F.

09:51 20 MR. RUNIONS: Okay.

21 THE COURT: I mean, I thought --

22 MR. RUNIONS: I see that; but I mean, the
23 misrepresentation, first off, would have had to have been
24 before she signed her contract, unquestionably.

09:52 25 THE COURT: Well, that's what this says.

09:52 1 MR. RUNIONS: Okay.

2 THE COURT: It said it was before entering the
3 contract of July 21st.

4 MR. ESTEFAN: Right.

09:52 5 MR. RUNIONS: Okay. Are we discussing this in the
6 context of the me-too witnesses?

7 MS. VORPAHL: No. I think it's an objection that I
8 made.

9 MR. RUNIONS: I'm sorry.

09:52 10 MS. VORPAHL: It actually goes to an objection that I
11 made; and I'm still trying to read, your Honor.

12 THE COURT: No question that the primary point of
13 Count 8, fraud in the inducement, is fraud by omission; but I
14 do think they've said enough -- that is, the plaintiffs have
09:53 15 said enough to make a case for fraud by affirmative
16 misrepresentation of fact. Okay.

17 *(Recess was taken from 9:53 a.m. to 10:09 a.m.)*

18 *(Jury present)*

19 THE COURT: Members of the jury, please be seated.

10:09 20 MR. ESTEFAN: Your Honor, before we get started, I
21 would like to ask Ms. Vorpahl about two of the exhibits I
22 referenced.

23 THE COURT: Okay.

24 *(Sotto voce discussion between Mr. Estefan and Ms. Vorpahl)*

10:10 25 MS. VORPAHL: I certainly have no objection to 3, and

1 I'm fine with 4.

2 MR. ESTEFAN: Plaintiff offers Plaintiffs' 3 and 4,
3 your Honor, without objection I believe.

4 MR. MCKINNEY: No objection.

5 THE COURT: Admitted without objection.

6 MR. ESTEFAN: I'll mark them and get them to you.

7 MS. VORPAHL: May I approach, your Honor?

8 THE COURT: You may.

9 **CROSS-EXAMINATION**

10 BY MS. VORPAHL:

11 Q. Good morning, Mr. Andino.

12 A. Good morning, ma'am.

13 Q. Will you tell the jury a little about yourself, your
14 background, and how you came to be employed at KBR?

15 A. Sure. As I stated before, my name is Gabriel Jose Andino.
16 I was born in Spain. My dad was in the United States Navy,
17 stationed there. For the most part, I grew up as a military
18 brat, moving from base to base.

19 From Spain, we moved to Maryland. From Maryland,
20 we moved to Florida. And from Florida, we moved to Puerto
21 Rico, which is where my parents are from. I stayed there
22 through high school and on through college.

23 I graduated from the University of Puerto Rico
24 with a Bachelor's degree in industrial engineering. I too
25 joined the United States Navy as a Civil Engineer Corps

10:11 1 officer. I did two years of active duty, and I did a little
2 bit over eight years of active reserves.

3 After my two years of active duty, I joined what
4 was then Brown & Root, which is now, of course, KBR. And I --
10:12 5 in that regard, I've been at different places with the company,
6 including Somalia, Rwanda, Haiti, the Balkans and, of course,
7 the Middle East.

8 Q. Can you say how much of your career at KBR -- which I
9 understood you to say has been about almost 20 years. Is that
10:12 10 right?

11 A. That's correct.

12 Q. How much of it have you spent in theater, or overseas?

13 A. My first appointment was to Mogadishu, Somalia, after the
14 US forces went there in the early Nineties. I stayed there for
10:12 15 15 months. My -- following those 15 months, I was transferred
16 into Rwanda, and I stayed there for about another 15 months.
17 Following those 15 months, I was transferred to the mission in
18 Haiti, where I was there between three and four months, closing
19 out a project.

10:13 20 Then I came back stateside; and I worked in
21 support of NASA, Johnson Space Center, for a project we had
22 there. And after three years there, I went back overseas to
23 the Balkans for four years and to the Middle East for two. So,
24 do the math.

10:13 25 Q. And how long have you been back in the United States?

10:13 1 A. I last deployed on a full-time basis in -- from 2004 to
2 2006. June of 2006 is when I returned back to the States.

3 Q. And that's the period of time that you were project manager
4 at Camp Hope --

10:13 5 A. That is correct.

6 Q. -- in the Green Zone?

7 A. Yes, ma'am.

8 Q. I think you've maybe done as good as job as you'll be able
9 to; but, if not, I wanted to give you the opportunity. You --

10:13 10 in response to some questions that were asked of you by
11 plaintiffs' counsel, you described Camp Hope as a small city or
12 a small town. I don't remember which of those things you said.

13 Are you able to describe Camp Hope any better for
14 our jury, just since we have so little frame of reference for
10:14 15 what you're talking about?

16 A. Sure. I'll be glad to try to do that in a little bit more
17 detail so that at least you can gather an image.

18 I guess the most important thing to understand
19 about what we call the "Green Zone" was that it was a section
10:14 20 of downtown Baghdad -- no different from if you just chose a
21 section here in downtown Houston -- that was isolated and
22 confined and enclosed and -- "secure" is probably the best
23 word -- by the military forces. It was very large.

24 And it comprised of Iraqi government buildings,
10:15 25 parliamentary buildings. It was comprised of housing, Iraqi

1 people that lived in their homes, condominiums, businesses.

2 So, the -- you know, again, the best way I can
3 describe is it if you took a section of downtown Houston and
4 you cordoned it and secured it and you called that the Green
5 Zone, that would be the equivalent.

6 Q. What were living conditions, what were the living
7 accommodations that were available at Camp Hope for KBR
8 employees?

9 A. Camp Hope was predominantly, by and large, our home of
10 residence. That's where we lived while we were there. And it
11 was comprised of what we have known during this trial as
12 "CHUs," containerized housing units. And for lack of a better
13 word, looked -- considered a modular trailer, very small one
14 albeit; but, nonetheless, that's what it best resembles.

15 We had a few administrative buildings; we had a
16 laundry unit there; we had MWR facilities there for after
17 hours; we had our dining facilities there.

18 But, by the way, it was several hundred modular
19 housing units that we had.

20 Q. Were employees -- some employees also housed in barracks?

21 A. Unfortunately, we did have barracks. And I say
22 "unfortunately" because most people, although not all -- some
23 people actually did not want to move out of the barracks. But
24 most people wanted their own assigned trailer for the sake of a
25 little bit more privacy than the barracks offered.

10:16 1 Q. And the barracks, how did you move from the barracks into a
2 containerized housing unit, or a CHU?

3 A. The system was pretty simple. It was based on your arrival
4 as an employee to the theater of operation, meaning to Iraq.

10:17 5 So, the day you arrived at Iraq, that was considered your
6 in-country date. And the seniority drove the list as to when
7 you would move up the list, or up the chain, I guess, to a
8 housing unit.

9 And that -- housing units would become available
10:17 10 when employees rotated. Considering the environment, the
11 rotation was actually frequent. But also because of our
12 expansion of accommodations. While I was there, we were in the
13 process of expanding our camp for more trailers.

14 Q. So, you would get more trailers from time to time?

10:18 15 A. Yes.

16 Q. Okay. And how did people know sort of the pace at which
17 they might be moving up the list?

18 A. There was at least two methods, that everybody knew. The
19 first one was they could go to the housing department -- we
10:18 20 called it the "billeting" department -- and find out where they
21 stood, when they would become available.

22 But the one that most employees used, because it
23 was readily available to them living in the barracks, was a
24 list that was posted, a roster, in alphabetical order, that was
10:18 25 posted on the wall of the first floor so that employees could

10:18 1 just look at it by name and figure out when it was their turn.

2 Q. And you now know that Jamie Jones lived in Barracks 2. Is
3 that right?

4 A. Yes, I know that. I know that.

10:19 5 Q. Was that one of two barracks at Camp Hope?

6 A. Yes, ma'am.

7 Q. All right. So, have you had a chance to look at the roster
8 from July of 2005 and ascertain how many men and how many women
9 were housed in Barracks 2 at the time Ms. Jones was at Camp

10:19 10 Hope in late July of 2005?

11 A. I have looked at that roster. We had a total of 49 men and
12 a total of 28 women, for a total of 77 personnel.

13 Q. That were housed in Barracks 2 --

14 A. In Barracks 2.

10:19 15 Q. -- in late July of 2005?

16 A. That's correct.

17 Q. And are you consulting Exhibit 106 to arrive at those
18 numbers?

19 A. Yes, ma'am.

10:19 20 Q. All right. And if the jury wanted to go back and check
21 your work --

22 MS. VORPAHL: Can we put Exhibit 106, just the first
23 page of it, up on the screen?

24 BY MS. VORPAHL:

10:20 25 Q. Can you explain to the jury how they could go back and

10:20 1 check your work if they wanted to?

2 A. Sure.

3 MS. VORPAHL: If we could enlarge, like, maybe the
4 first half of the page so that the jury can see better?

10:20 5 BY MS. VORPAHL:

6 Q. Can you explain, Mr. Andino, what they would look for?

7 A. Sure. The easiest way would be to go down the Room Number
8 column and look for anything that started with a B1 or a B2 and
9 identify those. And then, with that in mind, look at the

10:20 10 name --

11 Q. "B1" would be Barracks 1, right?

12 A. Barracks 1. And, then, the room number -- or Barracks 2
13 and the room number. And then, once you've segregated that
14 information, you would look at the name and, obviously,
10:20 15 determine whether it was a male or a female.

16 Q. All right. But you know these people, and you have
17 determined that there were 49 men and 28 women in Barracks 2 at
18 Camp Hope in late July of 2005 when Ms. Jones was there. Is
19 that right?

10:21 20 A. Yes, ma'am.

21 Q. And did you locate Ms. Jones' name on this list, Joint
22 Exhibit 106?

23 A. Yes.

24 Q. That would be on the second page?

10:21 25 A. Yes, ma'am.

1 Q. And what room does it say she was assigned to?

2 A. She was assigned to Barracks 2, Room 201.

3 Q. All right. I notice that your name is not on this list,
4 Mr. Andino. Can you explain to us why that is so?

5 A. Sure. When I arrived into Iraq, initially, I was
6 transferred over from the Balkans as the -- what we call at the
7 time back then, was Task Order 59 project manager, which was
8 separate from the task order associated with the Department of
9 State. The trailer that I was assigned to was controlled
10 outside of the auspice of the Department of State related task
11 order. So, in essence, somebody else controlled the billeting
12 that I was assigned to.

13 Q. Upper on another list?

14 A. Another list.

15 Q. All right. Was anybody in Barracks 2 on another list or is
16 this the entire list for Barracks 2?

17 A. No. There would not have been another list under the
18 Department of -- or the task order that we're talking about.
19 This was it.

20 Q. So, you feel comfortable saying 49 men and 28 women is the
21 right count at the time Ms. Jones was there?

22 A. I do.

23 Q. All right. You'll recall that in some questions -- and I'm
24 changing topics now -- that in some questions that you were
25 asked in your prior examination you were asked whether

10:22 1 Ms. Jones left on a Black Hawk or a Little Bird. Isn't that
2 right?

3 A. Yes, ma'am.

4 Q. All right. You were shown an e-mail from Mr. Shook. And
10:23 5 tell us again who Mr. Shook is?

6 A. Mr. Tommy Shook was my security department manager.

7 Q. Okay. And that e-mail, I believe, was dated July 30th.
8 And it said that Ms. Jones would be leaving on a Little Bird.
9 Is that right?

10:23 10 A. Yes.

11 Q. And had -- and you indicated that you had previously -- or
12 during this period also been led to believe that she might
13 leave on a Black Hawk. Is that right?

14 A. We were -- KBR was trying to get Ms. Jones out the most
10:23 15 expeditiously as possible. Within our control, we would have
16 access to the military helicopter channel.

17 Q. Which would have been a Black Hawk?

18 A. Black hawk, correct.

19 Q. All right. Let me, if I could --

10:23 20 MS. VORPAHL: And, Wendy, would you come and help me?

21 BY MS. VORPAHL:

22 Q. I just wanted to show the jury what's been marked as a
23 portion of Plaintiffs' Exhibit 12, which is an e-mail that you
24 received the day prior to.

10:24 25 Is this an e-mail dated the evening of July 29th,

1 where Mr. Shook indicates that Ms. Jones is scheduled to leave
2 on a Black Hawk.

3 A. That's correct.

4 Q. All right. And I'm going to ask you again, do you know
5 whether she left on a Black Hawk or a Little Bird?

6 A. I do not know specifically what she left on. I mean, the
7 record led me to believe it was a Little Bird, at the end of
8 the day; but I know we were planning for the Black Hawk. And,
9 obviously, the Department of State decided that they would
10 escort her out and took her on the Little Bird.

11 Q. All right. Do you know who was with Ms. Jones at the time
12 she left the Green Zone?

13 A. KBR would have had another employee with her; and, of
14 course, the Department of State would have had employees with
15 her, as well.

16 Q. You were asked some questions about an allegation, I guess,
17 that Jo Frederiksen made about a room search. Were room
18 searches conducted from time to time at Camp Hope and elsewhere
19 that you were overseas since you've been employed with KBR?

20 A. Unfortunately, they were. And I say "unfortunately"
21 because it was one of those necessary evils we had to do from
22 time to time.

23 Q. How was the decision made what rooms to search?

24 A. The project manager for that location would decide when a
25 room search was to be done. And the room searches were random

1 in nature. And depending on the size of the camp, they would
2 have done all rooms or a portion of it. If it was too large of
3 a camp, obviously, they would have done a portion of it. And I
4 know that on at least two occasions my rooms were searched at
5 different times because --

6 Q. While you were overseas?

7 A. While I was -- once, at Camp Hope, not in the capacity of
8 the USMI mission, the other mission that I talked about. And I
9 know it's kind of confusing. And, then, at a different
10 location.

11 Q. All right. Mr. Andino, did you have your own copy of the
12 KBR or Halliburton Code of Business Conduct summary like I'm
13 holding up here, which is Joint Exhibit 5?

14 A. I did have one of those yes, ma'am.

15 Q. Did every employee receive one of Joint Exhibit 5?

16 A. They would have been issued one of those here in Houston
17 while they were going through the deployment center.

18 Q. All right. Or if they were already employees, might they
19 already have it?

20 A. They would have had it, of course.

21 Q. And was that true in July of 2005, if you know?

22 A. It hasn't changed throughout the years I've been with the
23 company.

24 Q. Now, I believe you testified that Jamie Jones arrived at
25 Camp Hope on July 25 of 2005. Is that right?

10:27 1 A. That's what I stated.

2 Q. When did you first meet her?

3 A. I met Ms. Jones the afternoon of her arrival, is my
4 recollection, if I'm accurate with my recollection. It was
10:28 5 a -- it was just a coincidental meeting. I was going from my
6 office to somebody else's and she was coming by with another
7 employee and that employee stopped me and introduced me to
8 Ms. Jones.

9 Q. When you were the project manager of Camp Hope, how many
10:28 10 people did you supervise directly or indirectly?

11 A. We had over 700 ex patriots, meaning personnel that we
12 hired through Houston. In addition to that, we had
13 third-country nationals that would have been hired along with
14 Iraqi nationals. And, of course, we would have had
10:28 15 subcontractors that worked in support of the mission. So, by
16 and large, we had well over 3,000 personnel supporting the
17 Department of State mission.

18 Q. I want to turn specifically -- well, before I turn to
19 Ms. Jones' allegations, let me ask you this.

10:29 20 THE COURT: Let me ask one question first. I'm sure
21 I've forgotten, but how many people were there total in the
22 camp?

23 THE WITNESS: We -- living in the camp day by day --
24 and these were -- I mean, it was a KBR camp. They were the
10:29 25 only people that lived there.

1 THE COURT: I know that.

2 THE WITNESS: We had well over 700 people.

3 THE COURT: Thank you.

4 BY MS. VORPAHL:

5 Q. Before I turn to the issue of Ms. Jones' specific
6 allegations, can you explain for the jury, if you know, how the
7 LOGCAP contract functioned, generally, and how KBR was paid
8 under that contract?

9 A. I'll try to do my best. The -- of course, the LOGCAP
10 contract was a -- what the army would call a cost-plus award
11 fee type contract. And the type of contract was dictated by
12 the nature of the work.

13 And probably the most important element to
14 understand is that the nature of the work was very fluid. So,
15 it's not like the department -- or the US Army can say
16 emphatically, "This is what we want you to do." They would
17 just give you a general idea, "This is what we need." And as
18 things changed, they would modify their requirements.

19 So, that is the basis for a cost-plus type
20 contract. It's to kind of level the playing field, based on
21 the unknowns. For LOGCAP III, unlike previous LOGCAP awards,
22 this contract called for a 3 percent award fee. And the way
23 that was determined -- and I know there's been a lot of talk
24 about what that means.

25 The way that's determined is, on a month-to-month

10:31 1 basis your client, with the support of the customer, provides
2 you feedback as to how you're doing. And they look at things
3 such as, of course, cost, I mean, everybody is interested in
4 cost -- making sure that you're making good business efforts
10:31 5 with the government's money; schedule, schedule is important,
6 in the context of are you coming in on schedule as work has
7 been planned; and the quality of work -- the workmanship. At
8 the end of the day they're paying you for an adequate product.

9 And that would -- that combination of information
10:32 10 would be funneled through a board, a panel, if you will, that
11 would, on occasion -- it could have been anything from a year,
12 you know, six months, three months -- determine how well you're
13 doing.

14 Q. All right. I want to change directions a little bit. In
10:32 15 addition to the training that you've described and that we -- a
16 lot of people have talked about that occurred out at
17 Greenspoint, was there training at each camp once new people
18 arrived in-country?

19 A. Each camp had very similar requirements that they would --
10:32 20 that we all had to contend with. But, by the same token, each
21 camp had very peculiar requirements that they had to contend
22 with.

23 For example, my camp, which was with the
24 Department of State, had very peculiar requirements that
10:33 25 another camp, such as that where the marines were, Al Asad, did

10:33 1 not have to contend with. And specifically with the amount of
2 local nationals that worked for us, that was uncommon in other
3 camps. Actually, it just didn't happen.

4 But I guess to answer your question, each camp
10:33 5 would provide training specific to their location.

6 Q. All right. And Camp Hope was no exception to that?

7 A. No, ma'am.

8 MS. VORPAHL: May I approach the witness, because I
9 think I can expedite this whole exhibit situation?

10:33 10 THE COURT: You may.

11 BY MS. VORPAHL:

12 Q. Mr. Andino, I'm going to hand you what has been marked
13 Joint Exhibit 135 and ask you if you can identify that as the
14 materials that accompanied the training that was presented at
10:34 15 Camp Hope in July of 2005.

16 A. This is the briefing that we did for all new employees.

17 Q. And how long did it last?

18 A. Took a full day.

19 Q. Okay. And was -- when was it conducted?

10:34 20 A. We had a schedule that, for the most part, did not change
21 unless it was absolutely necessary, whereas every Friday we
22 would take it for this briefing.

23 Q. So, whatever employees had arrived during the week would
24 have this training on Friday?

10:34 25 A. Yes, ma'am.

10:34 1 Q. Did Ms. Jones ever have this training?

2 A. Unfortunately, she did not attend this training.

3 Q. And why not?

4 A. Because when she arrived and the allegation of the rape was

10:34 5 being made, it just happened before that Friday.

6 Q. All right. So, she wasn't there a Friday to take the

7 training?

8 A. No.

9 Q. I just want to ask you a few questions about this training

10:34 10 and then this will be an exhibit and the jury will be able to

11 review it further. But if you'll turn to Page KBR 0001305 of

12 Exhibit 135 -- let me ask you this before I ask you about the

13 specific page.

14 Did you attend each week's "welcome" briefing?

10:35 15 A. I did the opening for all briefings, and I did the closing

16 for all briefings.

17 Q. So, you would go there twice every Friday?

18 A. Yes.

19 Q. All right. Tell us about this page that's marked 1305.

10:35 20 Was this one of your pages or was this one of somebody else's

21 pages?

22 A. No. This was -- the initial section was mine --

23 Q. All right.

24 A. -- up through the -- up through the logistics section.

10:35 25 Q. Okay. And tell us sort of what you would say to the new

1 people about this particular page, or slide.

2 A. Sure. Well, in general, with my section, of course, I
3 wanted to welcomes employees. I wanted to give them an
4 overview of what our task order represented. I wanted to
5 highlight some of the nuances with our customer, Department of
6 State.

7 I wanted to reinforce some of the training and
8 requirements that they would have already learned coming
9 through the deployment center here in Houston. And I wanted
10 to, I guess, make them feel proud, make them feel welcome to
11 our project, and to understand the things I expected of them so
12 that they can do their time, whatever that would be, in good
13 standing. And the page that you're referring to kind of helped
14 me do that.

15 I mean, it was -- to provide some expectations of
16 things that I would expect employees to do and things that I
17 did not want them to do and hoped that they didn't.

18 Q. Turn to Page 1362, KBR Page 1362, of Joint Exhibit 135.
19 That is entitled "SOS Evacuations." I am assuming somebody
20 from your medical staff would do that?

21 A. Sorry.

22 Q. No. Please take your time. I'm going too fast.

23 A. This 1362 would have been done by our safety and health
24 personnel, which medical fell under.

25 Q. And was it accurate that there were SOS evacuations for --

1 under these circumstances?

2 A. Yes. And, unfortunately, we had to rely on that from time
3 to time.

4 Q. All right. And is it accurate that, in order to return to
5 theater, you would have to get clearance from Houston?

6 A. That was a requirement, correct.

7 Q. All right. Take a look now, finally, at KBR 001383, that
8 page of Joint Exhibit 135.

9 A. (Complies).

10 Q. That's a -- I'm assuming this was a PowerPoint. Am I
11 correct? Or was this a manual that was handed out?

12 A. No. It was a PowerPoint.

13 Q. This slide deals with the Halliburton Code of Business
14 Conduct?

15 A. Correct.

16 Q. Had each employee received a copy of the Code of Business
17 Conduct when they came through Greenspoint, or before if they
18 had been a prior KBR employee?

19 A. Right. The expectation would have been that either you
20 received it as a new employee or that you had received it as a
21 prior employee.

22 Q. Okay. Can you explain about the training that you refer to
23 in the third sort of bullet point, or paragraph, of that
24 section on the Halliburton Code of Business Conduct?

25 A. Sure. The training that we emphasized or highlighted

1 during that briefing was referring to an annual training that
2 all employees received on the Code of Business Conduct.

3 Q. And that included employees in theater?

4 A. All employees, regardless of where they were. Throughout
5 the world, for that matter.

6 Q. Okay. You told the jury that you met Jamie Jones on July
7 the 25th. Is that right?

8 A. I --

9 Q. The day she arrived?

10 A. The day she arrive at USMI is when I met her, that
11 afternoon.

12 Q. All right. When did you next see or hear something about
13 Jamie Jones?

14 A. The morning when the rape allegation was made, July 28th --
15 or 27th.

16 Q. And from whom did you learn of that allegation?

17 A. It was a -- it was a call from Ron Boutwell. And I'm sure
18 he had others in there, to include security personnel.

19 Q. Did you actually speak with Tom Jones, Ms. Jones' father,
20 at some point that morning?

21 A. Actually, I did. Not long after my personnel informed me
22 of the allegation, as things would happen, our theater IT
23 manager, Mr. William Tompkins -- refer to him as Billy --
24 received a call from Mr. Jones, stateside; and Mr. Tompkins
25 referred that call to me. So, I had a very brief conversation

1 with Mr. Jones.

2 Q. And what did you tell Mr. Jones?

3 A. Well, I tried to tell him that we were aware of the
4 situation, that we were acting upon the allegation. And I
5 tried to provide him, as best as one can in a situation like
6 that, some sort of comfort and confidence that KBR was taking
7 care of his daughter.

8 Q. Did you exchange e-mails and prepare other reports that day
9 and in the following days that document the actions that you
10 and others took?

11 A. Sure. Every day following that incident, I had a
12 responsibility to our company, to our leadership, to provide an
13 update as to how we were taking care of our employee, whether
14 it be a status up date with plans that they already knew or
15 things that were developing. And we did that until she
16 departed and came back home.

17 Q. I would like to discuss some of those with you now?

18 MS. VORPAHL: May I approach the witness, your Honor?

19 THE COURT: You may.

20 BY MS. VORPAHL:

21 Q. I'm going to show you, Mr. Andino, what's been marked as
22 Exhibit 55, Joint Exhibit 55, and ask you if that is -- and
23 please take time to read it if you need to -- if that is the
24 first of the e-mails and reports that you prepared.

25 A. The e-mail is the first --

1 MS. VORPAHL: Could we put Exhibit 55 on the screen,
2 please?

3 BY MS. VORPAHL:

4 Q. Let's take a look at the bottom of the first page of
5 Exhibit 55, please.

6 You wrote an e-mail at 12:26 p.m. on Thursday
7 July 28, 2005. Is that right?

8 A. Yes, ma'am.

9 Q. Who did that e-mail go to, and could you say -- I mean, not
10 just their names but tell us the titles of these people.

11 A. Sure. In general, everybody that was on that e-mail was
12 our leadership, what I -- what we typically refer to as higher
13 headquarters to KBR in theater. And I'll just go name by name
14 and highlight their role. Perry Dalby was a program manager
15 for the middle east. He was basically the number two guy. Roy
16 Mohr was in the capacity of project manager for Iraq. Arnold
17 Palmer was in the capacity of theater human resources manager
18 for the Middle East. Daniel McGuire was in the capacity of
19 theater security manager for the Middle East. Doug Horn, who
20 was, in essence, my boss' boss, had responsibility for Iraq and
21 Afghanistan, as a program manager. Steve Shenk was at that
22 time in the capacity of Employee Assistance Program. Chuck
23 Dunn was in the capacity of employee relations. Remo Bryant
24 was my immediate boss. And Damian Kelly was the project
25 operations manager for Iraq.

1 In fact, the titles are kind of confusing if you
2 don't -- you know, if you're not working with them. But, in
3 general, all these individuals in some capacity or form had
4 responsibility for either the entire theater of operation,
5 which meant all the countries that we were in, or Iraq.

6 Q. And then you copied Ron Boutwell, who was Camp Hope's
7 manager of human resources, and William Goodgine, who was Camp
8 Hope's manager of security. Is that right?

9 A. Yes, both those individual.

10 Q. And you say in this first e-mail, "Attached please find the
11 initiate SIR regarding an alleged sexual assault incident.
12 Security, HR, and safety are managing this situation. From
13 this point forward, safety will report the medical condition as
14 required and security will report the results of the
15 investigation as required." Is that right?

16 A. I did.

17 Q. And, so, did you attach to this SIR -- what does "SIR"
18 stand for?

19 A. "Serious Incident Report."

20 Q. Did you attach to Exhibit 5 the initiate Serious Incident
21 Report that you prepared regarding these allegations?

22 A. I did, ma'am.

23 MS. VORPAHL: May I approach the witness, your Honor?

24 THE COURT: You may, yes.

25 BY MS. VORPAHL:

10:46 1 Q. I'm going to hand you now what has been marked as
2 Exhibit 53 and ask you if this is the Serious Incident Report
3 that was attached to that e-mail that you've identified as
4 Exhibit 55.

10:47 5 A. This was the initiate one.

6 Q. All right.

7 MS. VORPAHL: And if we could put that on the screen.

8 BY MS. VORPAHL:

9 Q. When was that -- did you prepare that exhibit?

10:47 10 A. It would have been collected by different sources, mainly
11 the two that we've already named, HR and security at the time.
12 It would have been prepared by my administrative support,
13 Mr. Goren Doditch and given to me for review before sending
14 out.

10:47 15 Q. All right. If we could look towards the middle of the
16 exhibit, it indicates, first of all, that it was submitted by
17 and it has your name. Is that right?

18 A. That's correct.

19 Q. And then the details that you submitted at this time. What
10:47 20 time was this submitted?

21 A. Well, the SIR states 12:10. The e-mail, of course, that it
22 was attached to would have been probably a little more
23 specific, 12:26.

24 Q. All right. That's less than two hours after the initiate
10:48 25 report. Is that right?

10:48

1 A. Yes, ma'am.

2 Q. And that's just after noontime?

3 A. Correct.

4 Q. All right. And what are the details that you have as of
10:48 5 that time?6 And please feel free to read from the Serious
7 Incident Report.8 A. The Serious Incident Report was intended to capture as much
9 information as we could so that we can inform our leadership of
10:48 10 what was occurring in incidents like this. And in this one I
11 start off by saying, "KBR female employee has alleged she has
12 been sexually assaulted by multiple male KBR employees. There
13 are allegations of drug use. Employee has been transported to
14 the army hospital for rape screen."10:48 15 Q. Down below that, there's a section entitled "Actions
16 Taken." Do you see that?

17 A. Yes, ma'am.

18 Q. And what does that indicate that has already been done by
19 12:10, or 12:26 when the e-mail actually went out?10:49 20 A. Right. We highlighted that medical department was
21 notified, that security department was notified, and that the
22 safety department was notified.23 Q. And turn to the next page and see if there is yet another
24 department that has been notified?

10:49 25 A. Under "Additional Comments," we stated that HR has also

1 been notified.

2 Q. And was that notification all in keeping with KBR's
3 policies?

4 A. It was.

5 MS. VORPAHL: All right. May I approach the witness,
6 your Honor?

7 THE COURT: Yes. Yes, ma'am.

8 BY MS. VORPAHL:

9 Q. I'm going to hand you now what's marked as Joint Exhibit 75
10 and see if -- I believe that is something from the next day.
11 Is that right?

12 If you go down to the -- go to the second page of
13 that exhibit and you'll see that that is a -- that it starts
14 with an e-mail from Ron Boutwell --

15 A. Right.

16 Q. -- to many of the same people who you've described to us.

17 A. That's correct.

18 Q. And what does it indicate in the message from Ron Boutwell
19 to you and others?

20 A. Right. It says, "Confidential, follow-up report from
21 yesterday's report, July 28th."

22 Q. All right. And is the report, the second report, the one
23 done on Friday the 29th of July, 2005, attached there as part
24 of Exhibit -- Joint Exhibit 75?

25 A. Right. It would have been the second SIR report, or an

10:50 1 update to the initial one.

2 Q. And does it, in fact, contain the second report?

3 If you could go to the third page of the exhibit,
4 does it, in fact, indicate that it's submitted on July 29th of
10:51 5 2005?

6 A. Correct.

7 Q. And at 12:55 p.m.?

8 A. That's correct.

9 Q. All right. And does it provide greater detail now with
10:51 10 regard to the events that have transpired and the actions that
11 KBR has taken?

12 A. It does highlight additional actions taken and events that
13 have transpired.

14 Q. All right. Can you tell the jury what actions had been
10:51 15 taken as of -- what additional actions had been taken as of
16 12:55 on Friday, the 29th of July, 2005?

17 A. Sure. "Employee was at the CASH hospital on July 28 from
18 1100 through 1450 under care of military victim advocate.
19 Sexual assault rape test kit was turned over to security, KBR
10:52 20 security, at 1450 on July 28. Employee was placed in a
21 separate secured living arrangement" --

22 Q. Let me stop you there and ask you why -- "the employee"
23 refers to Ms. Jones. Is that right?

24 A. Yes.

10:52 25 Q. Why was she placed in a separate secured living

1 arrangement?

2 A. For -- at the time, we thought it was in her best
3 interests, for security and her wellbeing, on the basis that
4 she had alleged that there was rape and multiple people
5 involved. I mean, I did not know who all those people would
6 have been.

7 Q. Had she identified these people?

8 A. Not at that time, no, ma'am.

9 Q. All right. Keep going, then. What else had transpired
10 since the last report at -- just after noon on the 28th of
11 July?

12 A. "Throughout the day, July 28th, HR representatives
13 interfaced with the employee and offered support and counseling
14 services. HR asked if the employee would like to speak with
15 her family. She spoke with her parents.

16 "At 1730, Department of State assumed
17 responsibility for the investigation predicated upon senior
18 leadership direction.

19 "At 1815, HR and security met with employee to
20 offer support and assistance.

21 "At 1900, HR and security returned to their
22 offices.

23 "At or around 2000, HR," in parenthesis, "female,
24 assisted employee at their request with writing an incident
25 statement.

1 "At 2130, Department of State special agents and
2 security arrived in HR.

3 "HR was advised by Department of State not to
4 have a further communication in any way with the employee or
5 with the investigation. Department of State collected employee
6 statements that employee provided to HR. Department of State
7 stated to KBR HR Jamie Armstrong," in parenthesis, "in the
8 presence of KBR HR manager and KBR security, that if Jamie, A,
9 discussed anything with anyone surrounding victim's written
10 statement that this is a violation of federal law. Department
11 of State advised Ms. Armstrong that even the CEO of
12 KBR/Halliburton is not privy to the information on employee's
13 written statement.

14 "At 2145, HR acknowledged and complied/cooperated
15 with the Department of State federal agents."

16 Q. 2145 is 9:45?

17 A. 9:45.

18 Q. All right. In the evening.

19 Go back up to the entry that says, "At or around
20 20" -- which would have been 8:00 p.m -- "HR female assisted
21 employee at their request with writing an incident statement."

22 Do you know who the pronoun "their" refers to?
23 Was it at Ms. Jones' request or at HR's request or do you know?

24 A. My understanding, it was at Ms. Jones' request.

25 Q. All right. And what's the source of your understanding?

10:55 1 A. Just recollection of things that I was briefed on.

2 Q. Okay. You did -- there's another report like this for the
3 next day, too. Isn't that right?

4 A. Yes, ma'am.

10:55 5 MS. VORPAHL: May I approach the witness, your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. VORPAHL:

8 Q. Let me give you what has been marked as Exhibit 76, Joint
9 Exhibit 76, and ask you if you recognize that document.

10:55 10 MS. VORPAHL: And if we could put the e-mail up on the
11 screen.

12 BY MS. VORPAHL:

13 Q. This is an e-mail that you sent to many of the same people.
14 And it says, "Confidential, follow-up report from yesterday's
10:55 15 report, July 29." Is that right?

16 A. Yes, ma'am.

17 Q. And this e-mail is dated Saturday, July 30th at 8:44 a.m.,
18 correct?

19 A. That's correct.

10:55 20 Q. Now, you'll notice that the SIR, the Serious Incident
21 accident report, is actually dated -- or is timed -- and it's
22 the second page -- is --

23 MS. VORPAHL: But you can leave this up for right now.

24 BY MS. VORPAHL:

10:56 25 Q. -- is timed 1740, which would be 5:40 in the afternoon. Is

10:56 1 that right?

2 A. That's correct.

3 Q. So, how could you send an e-mail at 8:44 a.m. attaching
4 something that wasn't prepared until 5:40 that afternoon?

10:56 5 A. I think this is another example which we saw earlier that
6 has to do when -- with the changes with time and the way the
7 e-mails is formatted based on when it was printed, where it was
8 printed.

9 Q. So, if it was 8:44 a.m. in Houston, what time was it in
10:56 10 Iraq?

11 A. Would have been nine hours later. So, it would have been
12 5:44.

13 Q. That's right. It would have been -- or 1744, using
14 military time. Is that right?

10:57 15 A. Correct.

16 Q. All right. So, at 1744 in Iraq, you sent Exhibit 76. Is
17 that right?

18 A. That's correct.

19 Q. Okay. And can you provide us with what has transpired in
10:57 20 the period of time since your last update with regard to Jamie
21 Jones?

22 A. Yes, ma'am.

23 Q. If you'll move to the second page so that the jury can see
24 this report, it was done at 5:40 in the afternoon on July 30th.

10:57 25 Is that right?

10:57

1 A. Yes, ma'am.

2 Q. Okay. And tell the jury, if you will, please, what
3 additional detail you are now providing to the other members of
4 KBR management --

10:57

5 A. KBR.

6 Q. -- in the theater?

7 A. "KBR HR, PM, and security met this morning to determine
8 medical leave travel for employee to Houston, point of origin."

9 Q. What is "PM"?

10:58

10 A. "Project manager."

11 Q. "Project management"?

12 A. "Project manager." So, it would have been, "KBR, human
13 resources, project manager, and security met this morning to
14 determine medical leave travel for employee to Houston, point
15 of origin.

10:58

16 "Department of State and KBR human resources
17 representative," in parenthesis, "female, will escort employee
18 tomorrow, July 31, via MILAIR" -- military air -- "to Kuwait."

19 "Department of State, KBR human resources, and
20 KBR Employee Assistance Program rep will meet in Kuwait
21 tomorrow afternoon/evening. KBR Employee Assistance Program
22 rep will escort employee to Houston.

10:58

23 "On Monday, August 1st, KBR Human Resources
24 travel is currently working with Kuwait on travel arrangements
25 for Employee Assistance Program rep and employee to Houston.

10:58

10:59 1 "KBR Human Resources manager, USMI, contacted
2 employee's father today, July 30th, at or around 3:25 p.m. to,"
3 and in parenthesis, "only inform the father of traveling
4 arguments of employee.

10:59 5 "Employee's father will meet with KBR Employee
6 Assistance Program rep and employee in at the International
7 Airport in Houston on Monday."

8 And the report --

9 Q. That's the end of that report. And do you know whether
10 KBR's human resource manager -- would that have been Ron
11 Boutwell?

12 A. That would be Ron Boutwell.

13 Q. -- did, in fact, contact Mr. Jones to provide him with
14 travel arrangements?

10:59 15 A. He did. He talked to Mr. Jones on -- communicated at least
16 with Mr. Jones on more than one occasion.

17 Q. All right. And we'll see those e-mails later in the case.
18 Let's take a look at now the following day, which is Sunday,
19 July the 31st. This is the day that Ms. Jones is going to
20 leave country. Is that right?

11:00 21 A. Yes, ma'am.

22 MS. VORPAHL: All right. May I approach the witness
23 again, your Honor?

24 THE COURT: Yes, ma'am.

11:00 25 BY MS. VORPAHL:

11:00 1 Q. Let me show you what has been marked as Exhibit 80, Joint
2 Exhibit 80, and ask you if that is your report submitted on
3 July the 31st.

4 A. Yes, it is, ma'am.

11:00 5 Q. Take a look at the header on the e-mail and tell me if we
6 don't have the same problem or issue here with regard to the
7 time of the e-mail and -- that this was, in fact, printed in
8 Houston, this e-mail?

9 A. Right. The SIR is -- has a time of 1810, which is

11:00 10 6:10 p.m. Baghdad local time. And the e-mail has a time of
11 9:18 a.m. with the same date, which, of course, wouldn't make
12 sense.

13 Q. So, if you add nine hours to that, which is the time
14 difference between Houston and Baghdad, this e-mail was sent at
11:01 15 1818 p.m. Is that right?

16 A. That's correct.

17 Q. In Baghdad.

18 A. Yes, ma'am.

19 Q. All right. And the time that the -- on the report that's
11:01 20 attached is what?

21 A. The time of the report that's attached is 1810, or 6:10
22 p.m.

23 Q. And what has happened since your last report? What
24 additional details are you able to supply?

11:01 25 A. Okay. "KBR Human Resources, Department of State, and

11:01 1 employee have arrived in Kuwait and have made contact with KBR
2 Employee Assistance Program representative.

3 "KBR Employee Assistance Program representative
4 will rendezvous with KBR Human Resources, Department of State,
11:02 5 and employee later this evening.

6 "At 5:05 p.m. Baghdad time, KBR Human Resources
7 manager contacted employee's father to provide an update and
8 inform him that employee arrived safely in Kuwait.

9 "KBR Human Resources manager informed employee's
11:02 10 father that employee and KBR Employee Assistance Program are
11 scheduled for a 10:25 p.m., Sunday, July 31st, departure from
12 Kuwait International.

13 "Alleged employees involved in the incident have
14 been interviewed by the Department of State at least once. We
11:02 15 anticipate additional interviews."

16 Q. Did you prepare yet another incident record the next day?

17 A. I believe we did, ma'am.

18 Q. Let me actually bring you a couple of exhibits and ask you
19 to take a look, if you will, please, at Exhibit 78. And I'm
11:03 20 also going to hand you Exhibit 84, but we'll talk about
21 Exhibit 78 first.

22 You know, I think I brought you the wrong two
23 exhibits. I might have brought you the one I marked on. Let
24 me give you Exhibit 78 and 84.

11:03 25 Exhibit 78 is an e-mail exchange that actually

11:03 1 starts earlier in this chain and contains some of the same
2 information that you've previously furnished. Is that right?

3 A. Yes. In essence, this is human resources reporting through
4 the channels about actions that have been taken.

11:04 5 Q. All right. So, go, then, to Exhibit 84, if you will,
6 please.

7 A. Yes, ma'am.

8 Q. Is this your next update with regard to the status of KBR's
9 efforts to get Ms. Jones home?

11:04 10 A. Yes, it is.

11 Q. All right. And the e-mail is dated Monday, August 1st at
12 11:41 a.m. Take a look at the report that is attached, and
13 tell me if this e-mail wasn't printed also in Houston.

14 A. Yeah. Based on the time, that's what occurred. That's why
11:04 15 the time difference is off.

16 Q. All right. And you indicate in your e-mail, "Confidential.
17 Please do not forward or discuss. This is an update from
18 yesterday's report," paren, "July 31."

19 Is that right?

11:05 20 A. Correct.

21 Q. So, this report was submitted on August the 1st. Is that
22 correct?

23 A. That's correct.

24 Q. At what time?

11:05 25 A. You would add nine hours to 11:41, and that would give you

1 8:41 p.m. Iraq time.

2 Q. Okay. And the report itself is dated 8:40 p.m. Is that
3 right?

4 A. Correct.

5 Q. Okay. And what is the update that you are able to provide
6 as of 8:40 p.m., August the 1st of 2005, Baghdad time?

7 A. "Confirmed with human resources travel office in Kuwait
8 that KBR Employee Assistance Program representative and
9 employee departed from Kuwait on Sunday, July 31st, at
10 10:25 p.m. and are en route to Houston.

11 "KBR Human Resources manager contacted employee's
12 father at 7:25 a.m., Monday, August 1st," in parenthesis,
13 "Baghdad time, to provide an update and inform him that
14 employee and KBR Employee Assistance Program representative
15 have departed Kuwait and are on schedule to arrive in Houston
16 at 4:20 p.m., Monday, August 1st.

17 "Department of State informed KBR that control of
18 their investigation was transferred to their DC office."

19 Q. I want to show you now Joint Exhibit 88 and ask you if you
20 identify this -- can identify this document. Again, I brought
21 you my copy.

22 Is this an e-mail from William Goodgine to Ron
23 Boutwell?

24 A. Yes, it is.

25 Q. With yet another update. Is that correct?

11:07 1 A. That's correct.

2 Q. Did you receive this update, as well?

3 A. It doesn't show on this e-mail that I was on it; but I

4 would have received it, the information that's on it.

11:07 5 Q. And there's -- if you'll turn to the second page of this,

6 what is the date on which this was submitted?

7 A. The Serious Incident Report is dated 1500, which is

8 3:00 o'clock p.m. local Baghdad time. Is that what you are

9 asking?

11:08 10 Q. Yes. On what date?

11 A. 5 August.

12 Q. All right. And is this a report that is confirming Jamie

13 Jones' safe arrival to Houston on August the 1st?

14 A. That is correct.

11:08 15 Q. And providing other information with regard to her personal

16 possessions, payroll, and so forth?

17 A. Yes.

18 Q. All right. Take a look at the cover e-mail. It says that

19 it was sent Friday, August 5th at 11:02 a.m. Is this another

11:08 20 e-mail in which we've got to add nine hours because it appears

21 to have been printed in Houston?

22 A. I believe so.

23 Q. All right. And finally, Mr. Andino, I'm going to --

24 MS. VORPAHL: May I approach?

11:09 25 THE COURT: You may.

1 BY MS. VORPAHL:

2 Q. I'm going to hand you Exhibit 89 and ask you if this does,
3 in fact, confirm receipt of the Serious Incident Report dated
4 August 5 -- confirm your receipt of the Serious Incident Report
5 dated August the 5th that we just talked about?

6 A. Right, it does.

7 Q. All right. And you forwarded it on to people that we've
8 described previously with a need to know?

9 A. Same -- same leadership would have been provided this
10 update.

11 Q. Ms. Jones' claims that there were armed Gurkhas at the
12 containerized housing unit where she was taken for her safety,
13 were there armed guards preventing Jamie Jones from leaving the
14 containerized housing unit?

15 A. No, ma'am. We had Gurkhas provided by Department of State
16 for the camp, but we would have not been able to provide
17 Gurkhas for her trailer.

18 Q. Did KBR direct the work of the Gurkhas or did the
19 Department of State direct their work?

20 A. We did not direct it. They were -- they were directed by
21 the Department of State as their employees.

22 Q. You were asked some questions about a complaint made by a
23 female employee named Shqipe -- and I believe that's
24 S-H-Q-I-P-E -- Tinova against Craig King. Is that right?

25 A. "Shqipe" Tinova.

11:11 1 Q. "Shqipe," am I saying it correctly?

2 A. "Shqipe."

3 Q. "Shqipe." I'm sorry. You don't pronounce the Q, then.

4 What happened to -- what -- you've indicated that
11:11 5 you addressed the situation with Mr. King. Is that right?

6 A. I did.

7 Q. Did he remain employed by KBR?

8 A. He did.

9 Q. Did you ever know of any other complaint against Mr. King
11:11 10 after that?

11 A. No, ma'am.

12 Q. And what happened to Ms. Tinova?

13 A. Ms. Shqipe Tinova remained employed with us for several
14 years, as I recall, and actually throughout that time was
11:11 15 promoted, as I remember.

16 MS. VORPAHL: Your Honor, I will reserve the remainder
17 of my questions for my case in chief.

18 THE COURT: Your direct?

19 Okay. Anything?

11:12 20 MR. McKINNEY: I don't have any questions, your Honor.

21 THE COURT: Okay. Any redirect?

22 MR. ESTEFAN: I do, briefly, your Honor.

23 **REDIRECT EXAMINATION**

24 BY MR. ESTEFAN:

11:12 25 Q. Mr. Andino, you said something about William Tompkins --

11:12 1 A. Yes, sir.

2 Q. -- calling you and referred the Tom Jones telephone call to
3 you. Jamie's father called?

4 A. Correct.

11:12 5 Q. And so, the sequence was Mr. Jones, Tom Jones --

6 A. Yes.

7 Q. -- reached Mr. Tompkins?

8 A. Right.

9 Q. And then Mr. Tompkins referred that call on to you?

11:12 10 A. Yes.

11 Q. And you told Mr. Jones what happened to his daughter, true?

12 A. I -- the call was very short.

13 Q. Yes, sir.

14 A. And he -- and I don't know who told him. I mean, I can

11:13 15 draw a reasonable conclusion, but he called me about the

16 wellbeing of his daughter. And I provided him, as best as I

17 could, some assurance that, yes, we were aware of what was

18 happening and taking steps to -- you know, to take care of her

19 and -- I mean, it was a very short call.

11:13 20 Q. Yes, sir. And because this call happened before you had
21 ever even gone to the trailer where Jamie Jones was --

22 A. Correct.

23 Q. -- the information that you provided to Tom Jones had to
24 come from someone other than Jamie Jones, right?

11:13 25 A. I'm not understanding the question.

11:13 1 Q. Well, Kristen Rumba, the physician's assistant gave you the
2 information about what happened. She's a KBR employee and she
3 told you what happened and that's how you knew what to tell Tom
4 Jones about what happened.

11:14 5 A. HR provided me the information that I needed. That's the
6 call -- the call -- when I first heard about the rape
7 allegation, it was through HR.

8 Q. Okay. The document that you were handed, this Joint
9 Exhibit 135, do you remember this one?

11:14 10 A. Yes, sir.

11 Q. It's 85 pages long, I noted. And if you look through it,
12 the only place in this 85-page document where sexual harassment
13 is even mentioned at all is on one page, on Page 1305. And
14 that's just in a list of stuff that's unacceptable. It's like
11:14 15 there's -- one, two, three, four, five, six -- seven things
16 listed there, and sexual harassment is the fourth thing that's
17 unacceptable.

18 All the rest of this 85-page training manual that
19 you use a PowerPoint on is all about don't build scaffolds this
11:15 20 way and don't build ladders this way and wear goggles and don't
21 smoke when you're filling up your gas tank and things like
22 that. Isn't that right?

23 A. If you looked at it, I guess that would be correct. I
24 haven't analyzed it in that capacity.

11:15 25 Q. There's no other -- I'm sorry.

11:15 1 A. It was all information that was important to highlight to
2 our employees.

3 Q. Yes, sir. But there's no other mention of sexual
4 harassment anywhere in that document?

11:15 5 A. Okay.

6 Q. Do you agree with that?

7 A. I mean, like I said, I've never analyzed it in that method;
8 but I'll take your word for it.

9 Q. Also, on the next page, 1306, of that very document, the
11:15 10 first thing 1306 says is, "The client comes first," with an
11 exclamation point.

12 A. Right.

13 Q. Ahead of the most valuable asset, employees?

14 A. I can explain that, since I was the one that did that
11:16 15 section for --

16 Q. Sure.

17 A. -- for introduction.

18 Q. By all means.

19 A. Meaning that the -- we were there to provide a mission and
11:16 20 their needs would come first, plain and simple.

21 Q. I think that's pretty much what it says.

22 A. Right.

23 Q. Yes, sir. Then further down on that same page, on 1306 of
24 Exhibit 135, I believe it is, it says -- there's a statement
11:16 25 about dealing with the press or the media?

1 A. Right.

2 Q. Did you design that, as well, that statement?

3 A. I did.

4 Q. And it says, "I cannot speak," in quotes -- this is what, I
5 guess, KBR employees are taught to say if, for whatever reason,
6 the media walked up on them or something in Iraq.

7 And if you would like to look at it, it's on
8 Page 1306.

9 And in quotes, in bold letters, it says, "I
10 cannot speak on behalf of the company, but I can have our media
11 relations specialist contact you."

12 A. Right.

13 Q. Why does KBR have the need for a media relations
14 specialist?

15 A. Well, the project is a very large one, very complex one;
16 and, by and large, myself included, don't necessarily have all
17 the answers that a media representative may have. So, rather
18 than provide misinformation, which is often what happens when
19 you don't have the information that's appropriate, we would
20 just ask employees to refer them to the appropriate person.

21 Q. On this Joint Exhibit 75 that you were asked about, that
22 Ms. Vorpahl handed you --

23 A. Yes, sir.

24 Q. Do you have it? It's probably in a stack there. And I
25 would like to --

11:17 1 MR. ESTEFAN: Can I have the Elmo, please?

2 Thank you.

3 THE WITNESS: Yes, sir.

4 BY MR. ESTEFAN

11:18 5 Q. If you go to Page 3, where the SIR begins, Page -- and I
6 think at the bottom right-hand corner it's KBR E02195, just so
7 we're all --

8 A. Yes, sir.

9 Q. Do you see that?

11:18 10 And on that page right there, do you see where it
11 says -- this is a report that you wrote. And there's several
12 places where you've used "her" and "she" and "her" in reference
13 to Jamie Jones, right?

14 A. Yes.

11:18 15 Q. Then, on the very next page, you write "their," in
16 reference to HR and security. And the next sentence you use,
17 "at their request."

18 Now, the "their" you mean in that sentence is HR
19 and security, not Ms. Jones. Because if you had wanted to use
11:19 20 the pronoun for that, you could have said "at her request."

21 A. You're looking at the second page of the SIR?

22 Q. Yes, sir. It's KBR E02196 is the number.

23 A. Correct.

24 Q. And the first sentence says "their," "HR and security
11:19 25 returned to their offices."

11:19 1 A. Right.

2 Q. And then they use the same pronoun, "their" in the very
3 next sentence?

4 A. Okay.

11:19 5 Q. And, so, I'm saying if you had been referencing Ms. Jones
6 you would have used "her."

7 A. I think it was just a typo.

8 Q. Same typo in both lines?

9 A. Well, the first sentence obviously refers to human
11:19 10 resources and security. The second sentence refers to
11 Ms. Jones.

12 Q. Right.

13 MR. ESTEFAN: Pass the witness, your Honor.

14 THE COURT: Any further questions from anybody?

11:20 15 MS. VORPAHL: Honest to goodness, I have one.

16 **RECROSS-EXAMINATION**

17 BY MS. VORPAHL:

18 Q. Mr. Andino, when you spoke with Mr. Jones on July the
19 28th --

11:20 20 A. Yes.

21 Q. -- was it clear to you whether he already knew about his
22 daughter's allegations or were you telling him about the
23 allegations?

24 MR. ESTEFAN: Objection, your Honor. That would call
11:20 25 for speculation by Mr. Andino.

1 THE COURT: I don't want you to guess. Do you have
2 any basis for knowing? And, if so, tell us what that basis is.

3 THE WITNESS: I spoke to him directly.

4 THE COURT: Okay.

5 THE WITNESS: And --

6 THE COURT: Was he calling you, or were you calling
7 him?

8 THE WITNESS: No. He called our IT department, and
9 that manager referred the call to me. So, that's how I came to
10 talk to him directly.

11 THE COURT: So, he was calling you, having already
12 been informed of the --

13 THE WITNESS: Correct.

14 THE COURT: -- alleged attack?

15 THE WITNESS: Correct.

16 THE COURT: Okay. You may step down.

17 MS. VORPAHL: Nothing further.

18 THE COURT: Do we have another witness?

19 MR. ESTEFAN: Your Honor, we have a video deposition
20 of William Goodgine that we can play; but I -- I can't vouch
21 for the time on it, how long it will be.

22 THE COURT: You don't have an estimate?

23 MR. ESTEFAN: We have an estimate of our part. I
24 believe our part is around 13 minutes.

25 THE COURT: Fourteen?

11:21 1 MR. ESTEFAN: Thirteen for us.

2 MS. CATES: We've got 40.

3 THE COURT: I mean, are you-all okay? I think we can
4 do that. Fifty-three minutes, that means we get to break for
11:21 5 lunch around 12:15.

6 Let's do it. If we hear cries of pain from the
7 jury, we'll stop the tape and I'll get you a lawyer.

8 *(Discussion off the record)*

9 MR. HEDGES: Can we point out who he is and where he
11:22 10 is and why it looks the way it looks?

11 THE COURT: You-all can do a better job than I can.

12 MR. ESTEFAN: Mr. Hedges can do a better job than I
13 can.

14 MR. HEDGES: This is William Goodgine, who's with
11:22 15 security. He's at a location other than Camp Hope in Iraq when
16 this is done and it's done by Skype and it looks like it was
17 done by Skype and it's very, very hard with the time sequence.
18 It's really chopped up.

19 Is that fair?

11:22 20 MR. ESTEFAN: That's a fair statement, yes.

21 MR. HEDGES: He's no longer a KBR employee.

22 THE COURT: Okay.

23 MS. VORPAHL: At this time, yeah.

24 *(Videotaped of testimony of William Goodgine playing)*

11:38 25 MR. ESTEFAN: Your Honor, that concludes our part. I

1 think, for the jury's benefit, that last little bit we lost the
2 signal.

3 THE COURT: Okay.

4 MS. CATES: We would like to play our cross.

5 THE COURT: All right.

6 *(Videotaped of testimony of William Goodgine playing)*

7 MS. CATES: That conclude our cross.

8 THE COURT: Okay. Why don't we break for lunch. Be
9 back here at 1:05.

10 *(Jury not present)*

11 THE COURT: All right. Please be seated.

12 Who's your next witness?

13 MR. ESTEFAN: Dr. Ciaravino this afternoon, and he's
14 here.

15 THE COURT: Actually ready to go?

16 MR. ESTEFAN: He actually wandered into the courtroom
17 for a minute, but Mr. Kelly escorted him out.

18 MR. HEDGES: Do we know who they plan to call after
19 him?

20 I doubt it will take the whole afternoon.

21 THE COURT: Well, we only have two hours.

22 *(Recess was taken from 12:20 p.m. to 1:14 p.m.)*

23 *(Jury present)*

24 THE COURT: Members of the jury, please be seated.

25 You may inquire. Yes, the next witness?

01:14 1 MR. KELLY: Your Honor, Dr. Michael Ciaravino.

2 THE COURT: Dr. Ciaravino, is he here?

3 MR. KELLY: He is, your Honor.

4 THE COURT: Yes, Dr. Ciaravino, good afternoon, sir.

01:14 5 We're going to have you up here. Before you take your seat,
6 Mrs. Loewe will administer the oath.

7 THE WITNESS: Okay.

8 THE CASE MANAGER: Do you solemnly swear that the
9 testimony that you're about to give in the matter now before
01:14 10 the Court will be the truth, the whole truth, and nothing but
11 the truth?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Now, is this the exhibit book
14 you're going to use?

01:14 15 MR. KELLY: I don't think so, your Honor. I'm
16 using -- I don't think so.

17 THE COURT: Okay. That's fine.

18 MR. KELLY: May it please the Court.

19 THE COURT: Yes.

20 **MICHAEL CIARAVINO, DULY SWORN, TESTIFIED:**

21 **DIRECT EXAMINATION**

22 BY MR. KELLY

23 Q. Dr. Ciaravino, good afternoon.

24 A. Hello.

01:15 25 Q. Would you please introduce yourself to the ladies and

01:15 1 gentlemen of the jury?

2 A. Hi. I'm Dr. Michael Ciaravino.

3 Q. Tell us about your education, sir, if you would.

4 A. I'm a plastic surgeon, Board certified plastic surgeon. I
01:15 5 was -- originally went to the University of Florida for medical
6 school. I started at Tulane, went to University of Florida.

7 Came out to Houston, and I studied at -- plastic
8 surgery at St. Joseph Hospital at a program where they focused
9 on a lot of breast surgery. And I've been in practice here in
01:15 10 Houston in my own practice for 14 years now.

11 Q. And you do have your own practice here in Houston?

12 A. Yes, I do.

13 Q. Okay. And how do you know -- or do you know Jamie Leigh
14 Jones?

01:15 15 A. I know Jamie as a patient who came to visit me.

16 Q. I want to ask you about that very briefly, Doctor. You
17 said you know her as a patient. Is it important when you're
18 evaluating someone that you've actually had an opportunity to
19 look at them and to put eyes on them and actually do an
01:16 20 evaluation?

21 A. Sure. When a patient comes into our office, we do a very
22 thorough process of asking them a lot of questions,
23 interviewing them, examining them, spending a lot of time to
24 get to know them.

01:16 25 Q. Is that the preferred method of offering opinions, over,

01:16 1 say, just a document review about a patient?

2 A. Oh, absolutely. There's many steps.

3 Q. Doctor, the clinic here in Houston that you mentioned that
4 you practice, is that where you treated Jamie Leigh Jones?

01:16 5 A. Yeah, that is where I met her and saw her and examined her.
6 And then I did her actual surgery at an outpatient hospital.

7 Q. Do you recall when the first time was that you saw Jamie
8 Jones?

9 A. Yes. It was in September of 2005.

01:16 10 Q. And I see that you have your medical chart in front of you,
11 Doctor. And you're welcome, certainly, to look at anything you
12 want to look at as we're speaking today.

13 A. Okay. Thank you.

14 MR. KELLY: For benefit of counsel, I would like to
01:17 15 put up what's been marked as Exhibit B197. I don't believe
16 there's any objections to any of these.

17 MS. HOLCOMBE: No objections.

18 MR. MCKINNEY: No objections.

19 THE COURT: Admitted without objection.

01:17 20 BY MR. KELLY:

21 Q. Actually, I'll go down to the bottom of that. You can see
22 the date on there. This would have been -- first of all, can
23 you tell us what this document is, Doctor?

24 A. Yes. That's the form that the patient fills out when they
01:17 25 come to my office, to tell about their medical background

01:17 1 and --

2 Q. So, when Jamie came to your office on September 6 of 2005,
3 she would have filled this out?

4 A. Yes.

01:17 5 Q. So, in fairness, the words on here are really her words?

6 A. Yes.

7 Q. Okay. And she reported to you at that time -- well, first
8 of all, it was about six weeks after the report of the assault
9 in this case. Is that right?

01:17 10 A. Yes.

11 Q. And she reported to you -- I see that she at least checked
12 the block for "anxiety and depression"?

13 A. Correct.

14 Q. And she also reported that she had post-traumatic stress
01:18 15 disorder from the rape or sexual assault.

16 A. Yes.

17 Q. Is that right?

18 A. That's correct.

19 Q. And it says that she has chest pain. Do you recall talking
01:18 20 with her about chest pain?

21 A. A little bit about chest pain, yes.

22 Q. What do you recall about that, sir?

23 A. She was saying that since she was attacked there was some
24 discomfort.

01:18 25 Q. Do you recall when she first met with you, Doctor, her

01:18 1 having a misunderstanding about a torn pectoral muscle?

2 A. Yes. When she came in telling her story, she had told me
3 that she was attacked and "I think I tore my pectoral muscle,
4 and now my implants are out of position and messed up,"
01:19 5 basically.

6 Q. Okay. And did you understand that to be a correct or
7 incorrect accounting of what actually happened to her body?

8 A. Well, I was a little suspicious. A lot of times patients
9 come in and they mention that they tore their muscle. And I
01:19 10 often find that the muscle was actually not torn. But I know,
11 in my experience, most likely what happened is the muscle kind
12 of had forced the implants out of position.

13 So, a lot of times patients will come in and I'll
14 frequently hear that, "My muscle is torn." And I'm, "Yeah.
01:19 15 Maybe, maybe not." So, if that answers your question.

16 Q. It certainly does. Thank you. And did you make a
17 determination in this case of what was actually going on with
18 Jamie?

19 A. Well, I examined Jamie, and I knew that Jamie had implants
01:19 20 that were put in by another doctor. She had breast implants.
21 And as I examined her, I immediately noticed that her implants
22 were out of position. They were set very low and very wide
23 out.

24 Q. Is there a name for that condition, Doctor?

01:20 25 A. Typically we refer to that as "bottoming out." Her

01:20 1 implants "bottomed out" is the term that we use.

2 Q. I'm putting up B198, Doctor, which I believe is also a page
3 from your record. And it seems to indicate that you circled
4 "bottoming out" -- or "bottomed out" on this particular record.

01:20 5 Can you read what you wrote next to that?

6 A. "More on the left."

7 Q. Okay. And does that mean it's asymmetric?

8 A. Yes. "Asymmetric" means that the two sides are not even.

9 Q. Okay. And why is that -- or is that significant?

01:20 10 A. Well, it's mostly significant to me as the -- I view myself
11 as the repairman to try to make her breasts as even as
12 possible. And we were going to have to do, you know, more work
13 on the left side.

14 Q. Doctor, in terms of the severity of this bottoming out --
01:21 15 let me back up a little bit.

16 How many repair surgeries do you think you've
17 done in a bottoming out situation?

18 A. Well, I've done hundreds of repair surgeries, because I do
19 one of the highest amounts of breast surgery in the country.

01:21 20 As far as I know, I do -- there's two implant companies. For
21 the one company, I put in the most implants in the whole
22 country.

23 So, of course, I have a lot of patients who come
24 to me for repair of their breast surgery. Without question I
01:21 25 do the most in Texas, I do the most in Houston. So, I see a

01:21 1 lot of these type of cases. And it's fairly common to see
2 minor degrees of bottoming out, because it's a common thing
3 that can occur with implants over time. But usually it's
4 pretty minor. In a given week, about four or five times a
01:22 5 week, I'll do kind of a minor repair on a bottoming out case.

6 Q. Was Jamie's bottoming out minor, Doctor?

7 A. No. Jamie's was severe, one of the more severe cases that
8 I've had.

9 Q. One of the more severe you've had?

01:22 10 A. Yes.

11 Q. Out of the hundreds that you've done?

12 A. Yes.

13 Q. Were the findings with Jamie, were they -- were they
14 consistent with the reports of trauma that she was making to
01:22 15 you?

16 A. It all made sense to me. I believed her story. I had no
17 reason to doubt the story; but, yes, it's -- it was certainly
18 feasible, hearing her story, that over time she could develop
19 this problem.

01:23 20 Q. And what level of pain did she report to you, Doctor, when
21 she came in, in September?

22 A. She said she had very severe, extreme pain; and I think she
23 was on a medication for it, on an antiinflammatory. And when
24 she explained that -- when she mentioned she had pain, that
01:23 25 didn't really surprise me because a lot of times when the

01:23 1 implants are out of position now they are kind of rubbing
2 against the ribs and it's a sensitive -- sensitive area.

3 Q. This jury has heard some testimony about Jamie's body size
4 and the size of these implants not being properly proportioned
01:24 5 and at least the inference that that was the reason that she
6 was bottoming out to the degree that she was when you saw her,
7 Doctor. Can you address that for us?

8 A. Well, when Jamie came to see me, she was -- she was 5-foot,
9 6, 122 pounds; and the implants that were previously placed
01:24 10 were 360 or 380, filled up to 450. And those are a reasonable
11 size for her frame. They are -- there's a spectrum, and sizing
12 is hard to say exactly. I have many patients at that size.
13 It's not -- I wouldn't say that's overly extreme.

14 Q. Is sizing of breast implants, Doctor, something that really
01:25 15 is best left to the judgment of the surgeon who is actually
16 placing them?

17 A. Yes. Sizing -- there's a lot of factors that go into
18 sizing. Like, we can't just look at her height and weight. We
19 look at the width of the chest, our measurements there, our own
01:25 20 experience.

21 And, in fact, when I did her corrective surgery,
22 I -- by the time she came to me for the corrective surgery, she
23 was a little bit lighter -- or significantly lighter. And I
24 moved down in size, but just a little bit down in size. So, I
01:25 25 didn't fill it up quite as much; and that worked out very well.

01:25 1 So, you know, to answer that, I think that the
2 implant size that I used and was pretty successful with was not
3 that different from her original. So, I don't think her
4 original was extreme.

01:26 5 Q. In fact, I think you said she had lost some weight. Do you
6 remember what she weighed when you actually --

7 A. Yeah. I think when she -- when I originally saw her was
8 September, and then it was several months before she actually
9 had her surgery. And I think by that point she dropped down

01:26 10 to -- my notes say 98 to 105 pounds. So, she was basically
11 100 pounds. So, she dropped 20 pounds from her original
12 surgery to my surgery.

13 Q. And you put breast implants in that were just slightly
14 smaller, I think you said --

01:26 15 A. Correct. That's correct.

16 Q. -- than the original ones?

17 Doctor, assume with me that -- just for
18 argument's sake, that these breast implants were too large for
19 Jamie's size and so forth and that that was a contributing
01:26 20 factor to what happened here. Given that fact -- or given that
21 assumption, would trauma have played any role at all in what
22 happened to Jamie's breast by the time you saw her?

23 A. Well, it definitely could have. Often -- like, for
24 implants to bottom out, there's usually kind of a combination
01:27 25 of factors there. So, it's hard to just say that, yes, it's

01:27 1 just trauma or not, particularly when you have -- there's not
2 much there to support. So -- you have kind of thin skin trying
3 to hold up this implant.

4 Yes, in general, the bigger the implant, the more
01:27 5 chance for it to stretch that skin. What happens, when an
6 implant kind of gets out of the normal anatomy of the breast,
7 then it starts to raise the risk of bottoming out.

8 So, certainly sometimes trauma does play a role.
9 And what happens is it kind of exerts a force at the top of it
01:27 10 and now the implant's sort of out of position and, then, over
11 time, it continues to stretch, gravity, and continues to move
12 down.

13 So, that's why I kind of felt that, yes, that
14 could contribute to it.

01:28 15 Q. Do you believe more likely than not that trauma contributed
16 to the condition you saw in Jamie's case?

17 A. Yes, I believe --

18 Q. I see you sort of struggling with your hand up there,
19 Doctor.

01:28 20 MR. KELLY: May I approach the witness?

21 THE COURT: You may.

22 BY MR. KELLY:

23 Q. This is a demonstrative exhibit, Doctor. It doesn't have a
24 number on it, but have you seen that document?

01:28 25 A. Yes.

01:28 1 Q. And could you -- does that document assist you in
2 explaining what you were just telling us about with the
3 bottoming out?

4 A. Yeah, I think this would. And we'll look at it at this
01:28 5 view.

6 So, basically you have an implant up here, in
7 position. And, you know, ideally this implant would start a
8 little higher. You have the muscle kind of coming across it
9 and then the breast tissue sort of supporting it.

01:29 10 And then what tends to happen is either the
11 combination of -- the force of the muscle sort of pushes the
12 implant downward; and now you have the skin just trying to hold
13 it, and it can't really hold it. So, what happens is the
14 implant continues to move down and out.

01:29 15 And the other thing that happens is the nipple,
16 which in a normal breast would have been centered here, kind of
17 looks like it's moved up because the skin continues to stretch.
18 So, if you think on somebody's body here, you have a breast
19 with a nipple in position. As this starts to slide down, it
01:29 20 starts looking odd, stretching the skin; and the nipple looks
21 like it's going up north. So, that's a pretty good diagram.

22 If you look at it from the side, what happens
23 here, this is the muscle. The muscle only covers the top half
24 of the implant. The bottom of the breast is here. And, as
01:30 25 this forces down, the implant kind of ends up moving down. And

01:30 1 then over time just further -- kind of further moves south,
2 so -- and out.

3 Q. I think you were explaining to me earlier, Doctor, how the
4 artist's rendition of the torn capsule is maybe slightly off.

01:30 5 Would you explain that to us?

6 A. Sure. When we -- we talk about the word a "capsule,"
7 right? When any patient has an implant put in, normally your
8 body forms a little layer around it, like a film, that we call
9 a "capsule." It's almost like a Saran Wrap layer. So, an
01:30 10 implant has a little filmy layer around it.

11 And in this drawing, it would have been nicer if
12 they just made it like a little white line that goes all the
13 way around the implant, as a capsule.

14 So, here they're showing a torn capsule.

01:31 15 Really -- really what happens is the capsule that kind of came
16 across the bottom was helping support the implant a little bit.
17 But now it potentially kind of breaks the capsule, and then the
18 implant can move down.

19 Some people hardly have a capsule; others have a
01:31 20 thicker capsule.

21 But that would have been better if they drew it
22 all the way around there.

23 Q. Doctor, have you had an opportunity to review the medical
24 records from a Dr. Michael Eisemann?

01:31 25 A. Yes, I did.

01:31 1 Q. Did Dr. Eisemann confirm your findings of a tear in the
2 fibrous breast capsule?

3 A. Yes.

4 Q. Did you -- you would agree that Jamie certainly suffered a
01:32 5 severe disfigurement to her breast implants?

6 A. Yes.

7 THE COURT: The jury has been told that the phenomenon
8 of bottoming out is very difficult to fix surgically. Do you
9 agree with that?

01:32 10 THE WITNESS: I do -- I fix it all the time. It is
11 challenging to fix, but it's something that I can repair.
12 Those who do it a lot typically use a technique called
13 "capsulorrhaphy," where we put stitches in.

14 Part of the reason why it is hard -- so, I will
01:32 15 agree with that -- is now the skin has gotten stretched and
16 we're not really repairing that skin. So, yes.

17 THE COURT: Would it be fair to summarize your
18 position as being it's a more complicated surgery but success
19 can be achieved fairly regularly?

01:33 20 THE WITNESS: By someone who is very experienced at
21 doing this.

22 THE COURT: So, a lot more people would do implants
23 than would do repairs of bottoming out?

24 THE WITNESS: Correct.

01:33 25 BY MR. KELLY:

01:33 1 Q. In fact, you mentioned capsulorrhaphy, Doctor. Is that
2 what you did with Jamie Jones?

3 A. Yes. "Capsulorrhaphy" means "repair of the capsule." So,
4 what that means is that her implants have moved out too far.
01:33 5 And I've got to figure out how am I going to get them up there.
6 So, I get them up there by putting stitches in the capsule to
7 try to hold it up there. So, I'm using that capsule to get the
8 implants back up where they belong.

9 Q. And capsulorrhaphy is a surgical repair?

01:33 10 A. Yes.

11 Q. When you did your surgical repair in this case, were your
12 findings at least consistent with the trauma that had been
13 reported to you?

14 A. The findings are what I expected to see, that now her
01:34 15 internal space is very stretched out and -- so, I saw what I
16 expected to see, yes.

17 Q. Okay. You have reviewed -- well, have you reviewed a
18 number of series of photographs that have been taken of
19 Ms. Jones' chest since the July of 2005 assault?

01:34 20 A. Yes.

21 MR. KELLY: Give me just a moment.

22 BY MR. KELLY:

23 Q. I think these are an Exhibit 69 and 70 with the exception
24 of Dr. Eisemann's, which I'm also going to show you, Doctor.

01:35 25 And without reference to the specific numbers, I'm going to try

01:35 1 to use dates here.

2 I'll represent to you, Doctor, that these are out
3 of Dr. Lahiri's records. Do you recognize -- I believe this is
4 actually Page 91 from one of those records. Do you recognize
01:35 5 these photographs, Doctor?

6 A. Yes.

7 Q. And the photograph at the bottom, do you recall what date
8 that was taken?

9 A. That was in '05. I believe that was shortly after the
01:36 10 reported event.

11 Q. If I represent to you that was August 15th of 2005, does
12 that --

13 A. Yes.

14 THE COURT: The photo is not the event?

01:36 15 MR. KELLY: The photograph, yes. The photograph was
16 taken --

17 BY MR. KELLY:

18 Q. Doctor, can you tell me what it is that you see in
19 this photograph from August 15th of 2005, from Dr. Lahiri's
01:36 20 records?

21 A. Well, you start to see some asymmetry starting to come in
22 play because the breast on the left-hand side is starting to
23 bottom out and it's pointing the -- you see that the nipple is
24 starting to go up and out.

01:36 25 THE COURT: By "left-hand side," you mean her left or

01:36 1 our left?

2 THE WITNESS: Patient's left. Patient's left. Oh,
3 yeah --

4 BY MR. KELLY:

01:37 5 Q. This might make life easier for us. This one is actually
6 marked 8-15-05.

7 A. This is another doctor's picture. So, I'm just kind of
8 sharing what I see.

9 But, to me, it looks like the breasts are
01:37 10 starting to become uneven, asymmetric, meaning that this
11 implant is moving down too much; and that's why her -- this
12 skin is starting to stretch. So, it's bottoming out; and it's
13 forcing the nipple out here, worse on this side than on the
14 right side.

01:37 15 And, in fact, this line here kind of shows how
16 this nipple and -- these nipples are not properly aligned. And
17 that happens to occur as the implant is displaced out of
18 position.

19 Q. Doctor, the day after Jamie's assault, Dr. Jodi Schulz
01:38 20 performed a rape kit analysis where Jamie stood completely
21 naked in front of her; and Dr. Schulz examined Jamie and made
22 no mention of displaced breasts.

23 Would you expect an OB-GYN looking at what we're
24 seeing here on this exhibit to have made a notation of a
01:38 25 problem with the breasts?

01:38 1 A. No, not necessarily so. I mean, it usually takes, like, a
2 plastic surgeon to really start pointing out things like that,
3 unless she was really looking for it.

4 Q. I would also like to show you, Doctor, if I could -- and I
01:38 5 know that counsel have agreed to allow me to put this up. I
6 don't think that we have Dr. Michael Eisemann's records marked,
7 but these are photographs that appear to be dated 11-9 of '05.

8 And can you tell me, as compared to what you're
9 looking at on the board that was taken on 8-15-05, what's going
01:39 10 on there, Doctor?

11 A. Well, it seems like there's a little worsening of the
12 asymmetry now if you look again at that breast on the left-hand
13 side. It seems like if you took a ruler from the nipple to the
14 bottom of the patient's left, it's starting to stretch the skin
01:39 15 more. So, it's a worsening bottoming out.

16 Q. Is that the general nature of this type of injury, Doctor,
17 that it worsens over time after the initial trauma?

18 A. Yes. What typically happens is, once an implant is out of
19 position, now it kind of continues to get worse because the
01:39 20 skin can't really support it.

21 Q. You took photographs yourself before the surgery, did you
22 not?

23 A. Yes.

24 Q. My quality of photographs is not great, Doctor; but do you
01:39 25 recognize these?

01:40 1 A. Yes. Those are photos from my office the -- about a few
2 days before the surgery, maybe a week before I did the surgery.
3 So, I think it's like a half a year after the previous pictures
4 were.

01:40 5 Q. How does -- I don't know if we can see them both, based on
6 how I have this. Is there a way I can do that?

7 A. I think it was better when you zoomed in, if you're trying
8 to show me my picture. Well, whatever you want to do.

9 Q. I was going to show you both and ask you to compare what
01:40 10 you're seeing there, Doctor; and then I'll zoom in, if that's
11 all right.

12 Can you compare what you're seeing in the
13 November of '05 photograph to what you're seeing when you did
14 your surgery?

01:40 15 Which was when?

16 A. In July of '06 -- I'm sorry, June -- yeah, the actual
17 surgery was July. That picture was June 28th, '06. So, it was
18 about a week before the surgery.

19 Yeah, to compare the two -- so, looking at the
01:41 20 other doctor's picture, on the right-hand side of the screen,
21 and then you look down at my pre-op picture, it seems like it
22 got a lot worse. You can see the implants really moving down.
23 So, I believe that skin is stretching a lot more.

24 You can also see in that photo kind of the
01:41 25 difference in how thin she is when she's seeing me, on the

01:41 1 bottom here. You see how you could really see the definition
2 of the implant.

3 Q. Yes.

4 A. And if you look up on the picture above, to me, that
01:41 5 doesn't look overly -- to answer your previous question, that
6 doesn't look overly large for her frame when they were
7 originally placed. So, what's happened in the picture down
8 below is worsening bottoming out.

9 Q. When you say "worsening bottoming out," was this painful
01:42 10 for Jamie?

11 A. Yes.

12 Q. Was it painful for Jamie from -- certainly when she first
13 reported the pain back in September of '05, right?

14 A. I didn't understand the question.

01:42 15 Q. I'm sorry. Well, you noted extreme pain when she first
16 came in, in September of '05?

17 A. Right.

18 Q. Nothing had been done to relieve that pain --

19 A. Right.

01:42 20 Q. -- up until the surgery that you performed?

21 A. Right.

22 Q. Do you know why it took her so long to have this surgery,
23 Doctor, just generally?

24 A. I believe it was just to get permission to have the surgery
01:42 25 or maybe a financial thing to --

01:42

1 Q. She couldn't afford it?

2 A. Yes, I believe -- well, basically, when I see her, we say,
3 "Okay. You're going to have surgery." Then I leave it to my
4 coordinator. And then I didn't see her till she signed up
5 several months later.

01:42

6 Q. Gotcha.

7 A. So, I don't know.

8 Q. When you did the surgery, did you prepare a postoperative
9 report?

01:43

10 A. Yes.

11 Q. Okay. And did you also prepare some post-procedure
12 progress notes?

13 A. Yes.

14 Q. This is B210. Is that those post-procedure progress notes
15 that you prepared, Doctor?

01:43

16 A. Yes.

17 Q. And I noted that you indicated that she was, "Status,
18 post-trauma"?

19 A. Yes.

01:43

20 Q. So, even after the surgery, you found that her findings
21 were consistent, is that right, with the trauma?

22 A. I did not change any opinion on it. I wrote that just
23 based on what she came in stating, yes.

24 Q. Doctor, what other types of trauma can cause this severe
25 bottoming out?

01:43

01:43 1 A. Well, you know, it's hard to answer that because it's a
2 progression -- a lot of times I'll have a story where a patient
3 will come in and they'll say, "Oh, I was doing fine, things
4 were looking good and then my kid jumped on my chest and then
01:44 5 over time it seems to be getting worse."

6 Something -- you know, something like that, we
7 might hear.

8 Q. But -- and that's my point. It's typically an event and
9 then followed by a progression over time?

01:44 10 A. Many times, that's the case. Many times, it's -- it is a
11 progression. There's sometimes an event.

12 Q. Doctor, you took postsurgical photographs in Jamie's case?

13 A. Yes.

14 Q. And is that what we're looking at here on the right-hand
01:44 15 side?

16 A. Correct.

17 Q. Can you compare -- tell us the difference of why the -- or
18 what's significantly better, I guess, from the right-hand side
19 to the left?

01:44 20 A. Right. Well, you can see on the repair there I was able
21 to -- what I did was this -- "capsulorrhaphy" means putting in
22 stitches. So, I put in stitches across the whole bottom and
23 outside to help us move the implant up and really reduce the
24 distance from the nipple down. So, I got the implant back up
01:45 25 in better position.

01:45 1 And, also, around the top of the breasts there, I
2 kind of opened that area so the implant could get back up where
3 it's, you know, supposed to be.
4 Q. When Jamie came out of this surgery, Doctor, did you have
01:45 5 her wrapped up in anything? How was she --
6 A. I put her in a surgical bra that we provide and some gauze
7 wrapping.
8 Q. How long does she wear that?
9 A. She usually wears that bra for a couple of weeks, yes.
01:45 10 Q. Okay. And, so, she is not able to see herself, I take it,
11 until she takes that off. Is that right?
12 A. They peek a lot. I don't know what she did really.
13 Q. What do you tell them to do, Doctor?
14 A. We encourage them to wear a supportive bra afterwards and
01:46 15 they are -- I usually allow them to take the bra off, like, the
16 day after surgery. But we're encouraging them to wear it
17 basically, you know, pretty religiously because I'm trying to
18 get everything to heal up in position.
19 Q. Did Jamie come back to you for a three-month visit?
01:46 20 A. Yes, she did.
21 Q. Is that actually when these photographs were taken?
22 A. Right, those are at three months.
23 Q. At that time, Doctor, were there still stitches that were
24 palpable?
01:46 25 A. No. The -- for the most part -- I mean, she might be able

01:46 1 to feel a little bit in there, but the stitches are all hidden
2 on the inside. They're -- the repair -- the tacking stitches
3 are there for good. Those are permanent stitches, but they're
4 hidden on the inside. Maybe that's -- there's nothing on the
01:46 5 outside that you could feel.

6 Q. Okay. Do you recall in Jamie's specific case whether she
7 could feel when she touched?

8 A. I don't remember exactly. But that's a common thing, that
9 patients come back and say, "Oh, I feel the stitch a little
01:47 10 bit."

11 Yeah, I actually explain the puckers and told her
12 it will relax. That's a common thing that we hear. So, I
13 guess she did mention that.

14 Q. I want to ask you a little bit about the original breast
01:47 15 augmentation that Dr. Lahiri did in November of 2004. You were
16 aware of that, right?

17 A. Yes.

18 Q. And I think you were -- you've been asked, at least in
19 deposition, about the pneumothorax and that sort of thing that
01:47 20 was experienced?

21 A. Uh-huh.

22 Q. Do you have an opinion, Doctor, as to whether that
23 pneumothorax contributed at all to what you were looking at
24 when you examined Jamie in September of 2005?

01:47 25 A. Right. I don't think the -- the pneumothorax, I don't

01:47 1 feel, has anything to do with the shifting of the implants.

2 Q. Okay. And there was a note in one of the records that
3 Dr. Lahiri had made that said the tear in the muscle was
4 repaired. What does that mean, Doctor, from a medical
01:48 5 standpoint?

6 A. What that -- well, a pneumothorax means that in a certain
7 spot she went in too deep and kind of punctured the layer that
8 surrounds the lung. So, a pneumothorax is a kind of a
9 collapsed lung. And I believe what she was referring to is
01:48 10 she -- she probably went in with, like, a little zapper
11 machine, a Bovie, and she went a little deep and then realized
12 she did and put a stitch in to repair it. But that's really
13 more like between the ribs.

14 You know, you feel that muscle between your
01:48 15 ribs --

16 Q. Right.

17 A. -- she probably accidentally got in there, and it was a
18 little tear.

19 Q. In terms of severity, what are we talking about, Doctor?

01:48 20 A. It sounded like it was small and it repaired it itself
21 by -- I mean, she put in a stitch; but it was of no -- no issue
22 after.

23 Q. Is this the type of injury that typically does repair
24 itself?

01:49 25 A. Yes. If it was really small, it repaired itself. Like, a

01:49 1 lot of times it happens when they're putting in, like, a line,
2 like an IV, and someone will accidentally puncture it. That
3 would repair itself.

4 But pneumothoraxes that happen if somebody is,
01:49 5 like, in a car accident and broke their ribs, that doesn't
6 repair itself. They have to put in a chest tube, and it's an
7 emergency thing. So, a big pneumothorax could kill you.

8 But this sounded like a puncture thing that
9 wasn't a big deal.

01:49 10 Q. Gotcha. In fact, in your review of Dr. Lahiri's records,
11 did you note that Jamie had been completely healed before she
12 ever left for Iraq?

13 A. Yes.

14 Q. Did you review the letter from Dr. Lahiri of March 5th,
01:49 15 2005, where she noted that Jamie's implants were "perfect" and
16 that she had no complaints?

17 A. Yes.

18 Q. Is that relevant to sort of an evaluation of what you're
19 seeing when you saw Jamie then in September of 2005?

01:50 20 A. Well, yes, it was relevant because at -- you're -- you
21 know, that's all I had to go by at -- I mean, in March they
22 were okay; and now they're much worse, you know, they're out of
23 position.

24 Q. And other than the assault in Iraq, is there any other
01:50 25 explaining factor for what might have caused that?

01:50 1 A. Well, the assault certainly all made sense with it for it
2 to get that bad. So, no real other --

3 Q. All right. One last question on the pneumothorax. Did the
4 pneumothorax in 2004 play any role in the condition you looked
01:50 5 at when you saw Jamie in September of 2005?

6 A. The pneumothorax played no -- no role.

7 Q. Doctor, looking at the photograph that's on the board, I
8 think Dr. Lahiri described that as a severe deformity of the
9 left breast. Would you agree with her?

01:51 10 A. Yes. That's severe -- well, that's severe; but it got much
11 more severe in my pre-op pictures.

12 Q. What does it mean that Jamie had a loss of the inframammary
13 fold?

14 A. That's talking about the crease underneath the breast, and
01:51 15 basically the implant has kind of moved below it. So, it's
16 lost its supportive function.

17 Q. And, Doctor, we've kind of focused, I guess, on the left
18 breast as we've been talking; but is there deformity in the
19 right breast, as you're looking at that photograph, as well?

01:51 20 A. Yeah. In the photograph you can't really see it. But she
21 had it on both sides. In my photograph you could see it more.
22 In that one it actually doesn't look as bad.

23 Q. Can you see it also in the photographs taken in November by
24 Dr. Eisemann?

01:52 25 A. A little bit. Not too bad there.

01:52 1 MS. CULLEN: Mr. Kelly, would you mark those
2 photographs and enter them into evidence, please?

3 MR. KELLY: I would be happy to. I'll even put my
4 color copies in. How about that?

01:52 5 MS. CULLEN: Excellent.

6 MR. KELLY: That's Plaintiffs' 84, which we offer at
7 this time.

8 MR. HEDGES: No objection.

9 THE COURT: Admitted without objection.

01:52 10 BY MR. KELLY:

11 Q. We talked faster than my notes, so I'm skipping ahead, if
12 you can bear with me, Doctor.

13 A. Okay.

14 Q. Is it your opinion, Doctor, that trauma contributed to the
01:53 15 condition that you treated with Jamie Leigh Jones on September
16 of '05 and again in July of 2006?

17 A. Yes.

18 Q. Have you offered your opinions to a reasonable medical
19 probability, sir?

01:53 20 A. Yes.

21 Q. And, again, you're a treating physician, not a retained
22 expert, by me, true?

23 A. Right. Right. I'm not paid at all to be here. I'm here
24 because Jamie came to see me because I'm the breast guy. I
01:54 25 fixed it, and now I was asked to come here.

01:54 1 Q. Thank you for coming, Doctor.

2 MR. KELLY: I pass the witness.

3 THE COURT: Okay. Mr. Hedges?

4 **CROSS-EXAMINATION**

01:54 5 BY MR. HEDGES:

6 Q. Hello, Doctor.

7 A. Sure.

8 Q. We've met, right?

9 A. Yes.

01:54 10 Q. Talk to the jury a little bit about how susceptible breasts
11 are to pain when they are -- when they suffer some kind of a
12 trauma.

13 A. Sure. Depending on someone's sensitivity or -- breasts are
14 sensitive.

01:55 15 Q. One of the more sensitive parts of the body for a woman?

16 A. Sure.

17 Q. And is that because they have a lot of nerve endings in
18 them?

19 A. Yes.

01:55 20 Q. What about blood vessels; do breasts have a fairly robust
21 supply of capillaries and arteries?

22 A. Sure.

23 Q. And when a body part has a very robust blood supply, does
24 that make it more prone to bruising and swelling?

01:55 25 A. Yes.

01:55 1 Q. And, so, in addition to being very pain sensitive, are
2 breasts also very prone, if they are traumatized, to bruising
3 and swelling?

4 A. A breast could be prone to bruising and swelling.

01:55 5 Q. And, so, if a person was subjected to the kind of trauma
6 that Ms. Jones claims to have been subjected to over in Iraq
7 and goes to see a doctor the next day, isn't that person likely
8 to be in fairly severe pain and exhibit a certain amount of
9 bruising and swelling?

01:56 10 A. I would say it depends on exactly the mechanism to the
11 breasts. So, yes or no.

12 Q. Yes, if they were sufficiently traumatized. Is that fair?

13 A. If -- possibly so, yes.

14 Q. Okay. And, so, you would expect --

01:56 15 A. However, I guess it also depends on when a bruise would set
16 in and -- I don't think that's conclusive really either way.

17 Q. Tell us a little bit about that. How long, for somebody
18 who has been severely traumatized to their breasts, would it
19 normally take for bruises and/or swelling to become visible?

01:56 20 A. I mean, there's a lot of times when there's no visible
21 bruising to a breast, if it's underneath. It's hard to answer
22 that.

23 Q. I don't quite understand when you say that it's
24 "underneath."

01:56 25 A. Sometimes a patient would come in and they would report

01:56 1 some trauma to their breast or implant or they come see me,
2 they're concerned about their implant; and I wouldn't see
3 anything visible on the outside of the breast. So, there are
4 some instances where breasts are pretty durable.

01:57 5 Think of -- a breast in some sexual activities
6 don't necessarily bruise. And some of them can get fairly
7 aggressive. So, the bruising, to me, doesn't really -- can be
8 there or not.

9 Q. I think you mentioned to us that you perform a tremendous
01:57 10 number of capsulorrhaphies on women whose breasts have bottomed
11 out.

12 A. Yes.

13 Q. How many have you performed on women whose breasts have
14 bottomed out as a result of trauma?

01:57 15 A. Hard to answer that because --

16 Q. Why is it hard to answer?

17 A. Because I don't have those statistics. And sometimes
18 they're just reporting -- they would make mention of it. I
19 have not had any that had, like, direct -- that much direct
01:58 20 trauma like this.

21 Q. You've not -- of the hundreds and hundreds you have
22 performed, of capsulorrhaphies for bottoming out, none of them
23 have been the result of a trauma like you think this one is?

24 A. No. You're putting words in --

01:58 25 Q. I don't want to do that.

01:58

1 A. Okay. All right. I don't know the number; but on fair
2 occasions, patients would come in and say something along the
3 lines of, "My kid jumped on my chest." We've had some cases
4 of, "I've been in a car accident." But I don't know the number
5 of it.

01:58

6 And I'm more not necessarily looking at exactly
7 what happened as I now have the problem, "Oh, yes, you bottomed
8 out. I know how to fix it."

01:58

9 So, when they're telling me, "My kid jumped on
10 the chest" or "I was in an accident," that certainly made sense
11 to me and I see why this occurred; but I don't keep that
12 statistic.

01:59

13 Q. So, it's fair to say that when somebody presents themselves
14 to you with bottoming out, you're more concerned about the
15 extent of the bottoming out, how to fix the bottoming out, than
16 you are with what caused the bottoming out?

17 A. Yes, that's true.

01:59

18 Q. Analyzing whether it was caused by trauma or whether it was
19 caused by something else is not a significant part of what you
20 do, is it?

21 A. Correct.

01:59

22 Q. And would you tell the jury just a little bit more about
23 the technique that you use, the capsulorrhaphy and the interior
24 and lateral stitchings? There are other ways of doing it,
25 aren't there?

01:59 1 A. There's a couple of different techniques. But "orrhaphy"
2 means "repair," like "herniorrhaphy," "repair of."
3 "Capsulorrhaphy" means "repair of the capsule."

02:00 4 So, basically what's happened is you have a
5 space. And now, because the implant has moved down, you have
6 this big space in there. So, there's that capsule layer. And
7 what I am doing is putting in many different stitches close
8 together, kind of across the outside and across the bottom, to
9 bring that implant up and in. That's the main technique that's
02:00 10 used.

11 One other thing that's newer now, some people are
12 putting in, like, a supportive sheet; but it's still kind of
13 experimental. So, some variation of what I am doing is a
14 common approach.

02:00 15 MR. KELLY: I would just like to -- for Jamie's
16 discretion, your Honor.

17 MR. HEDGES: Oh, good idea.

18 MR. KELLY: Not anymore than we have to actually look
19 at them.

02:00 20 THE COURT: Yeah, that's fine.

21 MR. HEDGES: Can we put up KBR Exhibit 69, Page 7,
22 please?

23 BY MR. HEDGES:

24 Q. And I will come back to what we were just discussing a
02:01 25 little bit later.

02:01 1 Let me first just ask you, though. Is it sort of
2 a matter of surgeon's choice as to whether you use the
3 technique you use or some other surgeon uses some of these
4 other techniques that you mentioned?

02:01 5 A. Yes. But the majority of people who know how to do this
6 and treat it a lot will do one of two things, either what I'm
7 describing or put in some kind of, like, a mesh type material.

8 Q. What is your success rate with capsulorrhaphies for
9 bottomed out breasts?

02:01 10 A. It's very high.

11 Q. And how long should it last before there are problems?

12 A. Well, it's hard to say, because what happens with this is
13 you fix it but the skin is still -- it's variable because the
14 skin in some cases is stronger than others. The capsule, what
02:02 15 we've had to sew to, can vary from one to another. And there's
16 all different factors. It depends on the weight of the
17 implant, the force of someone's muscle. So, it's hard to
18 answer that.

19 Most of the people that I see and treat are -- we
02:02 20 have a very good repair, they're pretty happy with it. But
21 then you'll see some kind of recurrence to it. So, it's not a
22 permanent fix, but we've been pretty -- we've made a lot of
23 improvement.

24 Q. And we're going to look at the pre-op and post-op pictures
02:02 25 of Ms. Jones from your surgery in a minute. But as I recall,

02:02 1 you were very satisfied with the results of your surgery on
2 Ms. Jones?

3 A. Yes. Pretty -- for what I had to work with, I was pretty
4 satisfied with it.

02:02 5 Q. Would you have expected it to last for more than three
6 years before it bottomed out again?

7 A. No. It really could -- it really could have been at any --
8 any point I expect to see some little change with -- it
9 wouldn't surprise me. We would hope it would last -- it

02:03 10 becomes kind of like a subjective thing of, most commonly, you
11 see some recurrence, maybe even within a short period, within a
12 few months, but usually not too bad.

13 So, the most common thing is we'll see, yeah,
14 it's starting to bottom out a little bit but it's a heck of a
02:03 15 lot better than what she had.

16 Q. Would you have expected her to bottom out sufficiently in
17 three years enough so to require yet another reconstructive
18 surgery?

19 A. Not if it -- not -- I wouldn't expect it to be really bad,
02:03 20 but I would expect there to be a little bit -- like a little
21 bit off that a critical eye could pick up.

22 Q. Okay. We'll come back to that.

23 MR. HEDGES: Can you scroll a little bit further down
24 on -- let's just pull it down. I'm not seeing what I was
02:04 25 looking for.

02:04 1 BY MR. HEDGES:

2 Q. Let me ask you about the unfortunate occurrence, the
3 pneumothorax in Dr. Lahiri's surgery. And I want to stress
4 that this was something that happened in Dr. Lahiri's surgery
02:04 5 and not your surgery. Is that correct?

6 A. Right.

7 Q. Have you ever had that happen in one of your surgeries?

8 A. No, I have not.

9 Q. If you can actually -- and I think the term she used was
02:04 10 "visualizing the lung." Do you recall that from her note?

11 A. Yes.

12 Q. "Visualizing" is a good doctor word for "see"?

13 A. Right.

14 Q. So, you could see the lung. So, if you could actually see
02:04 15 through about seven layers of tissue and muscle and see the
16 lung, it had to be something more than just a microscopic
17 puncture wound, doesn't it?

18 A. Well, it depends if the lung -- sometimes what I imagine
19 someone could do -- I don't know at all. But you might want to
02:05 20 inspect it. So, she might have, you know, looked in there with
21 some retractors --

22 Q. With retractors.

23 A. -- to kind of detect the amount of injury that was there.
24 And that would probably be a good idea so you would know with
02:05 25 what you're dealing with. Because if she really did get in

02:05 1 there with a big opening, then she's going to have a bigger
2 problem, going to need a chest tube and things like that.

3 Q. Exactly. And she didn't need that?

4 A. Right.

02:05 5 Q. Doctor, nobody in their right mind would try to tie a
6 pneumothorax in a puncturing of these layers to a case of
7 bottoming out, would they?

8 A. No.

9 Q. But they might very well want to talk about it in relation
02:05 10 to chest wall pain?

11 A. I don't fully answer the question -- know the question, but
12 I wouldn't expect a puncture pneumothorax to cause much pain
13 over a long period of time. Usually it's like the pneumo
14 hurts -- while they're breathing is while it hurts. So, that
02:06 15 might last for a few days; but then it just kind of goes away.

16 Q. But it doesn't have anything to do with bottoming out,
17 right?

18 A. Right.

19 Q. Of course.

02:06 20 A. Right.

21 MR. HEDGES: Let's put up KBR 69, page and Bates
22 Number 11, please. It's the same photographs from
23 Dr. Ciaravino that we were looking at a few minutes ago.

24 BY MR. HEDGES:

02:06 25 Q. I promise I won't make the mistake I did in the deposition,

02:06

1 of not asking you which are the pre-op and which are the
2 post-op.

3 A. I could have got you guys a better picture. This is --

02:07

4 Q. And, Doctor, we talked in your deposition, you may recall,
5 of whether bottoming out was somewhat more likely to happen in
6 a very small person than it would in a larger person with a
7 larger chest cavity. Is that basically what you told me then?

8 A. Yes.

9 Q. And you agree with that?

02:07

10 A. Yes.

11 Q. And you also said earlier that the larger the implants, the
12 larger -- the greater the chance of bottoming out?

13 A. Correct.

02:07

14 Q. So, if you add together a very small, petite woman with --
15 to use Dr. Lahiri's words from one of her notes -- "very large
16 implants," you have in two different ways increased the chances
17 of bottoming out. Is that fair?

18 A. In general, bigger implants on a smaller person with less
19 support has more chance of bottoming out.

02:07

20 Q. And let me back up a little bit even beyond that to before
21 Dr. Lahiri. Have you seen -- I think Mr. Kelly actually put up
22 here very briefly -- I don't know if you talked about it, but
23 he put up here Dr. Lahiri's preoperative photographs of
24 Ms. Jones' breasts. Have you seen those?

02:08

25 A. Not lately.

02:08 1 Q. Well, let me give you a little help in this. She describes
2 the preoperative condition of Ms. Jones as "hypoplasia." Can
3 you tell the jury what "hypoplasia" is?

4 A. Yeah. That's the term we use for anybody with a small
02:08 5 breast. That's why they're coming to see us.

6 Q. Sure.

7 A. "Hypoplasia," "hypomastia" just means small breasts.

8 Q. And when they are a young person, petite with very small
9 breasts and, therefore, very less tissue, you've got less of a
02:08 10 structure to fit the implants into, don't you?

11 A. Yes.

12 Q. And that is a third factor that can increase the chances of
13 bottoming out, correct?

14 A. Yes. In general, the smaller the person -- but, like I
02:08 15 said, I didn't think those were overly large.

16 Q. Her breast implants that Dr. Lahiri put in, were they
17 silicone gel or saline?

18 A. Those are saline implants.

19 Q. And is saline heavier than silicone gel?

02:09 20 A. They're similar. They're the same implants that I used.

21 Q. And they weigh -- do they weigh more?

22 A. They are pretty close in weight. I don't have the answer
23 to that.

24 Q. And do the silicone -- excuse me.

02:09 25 Do the saline breasts deflate or rupture more

02:09 1 readily than the silicone implants?

2 A. Saline implants deflate more readily.

3 Q. When you -- and during your surgery, did you remove the
4 saline implants that Dr. Lahiri had implanted?

02:09 5 A. Yes.

6 Q. Were they ruptured?

7 A. No.

8 Q. Were they deflated?

9 A. No.

02:09 10 Q. So, is it fair to say that the implants themselves showed
11 no signs of trauma?

12 A. Right.

13 Q. Did the breasts themselves show any signs of trauma other
14 than being, to use your term, severely bottomed out?

02:10 15 A. Right. You wouldn't expect visible trauma that many -- I
16 operated on her, like a year or two out.

17 Q. I questioned Dr. Lahiri about your procedure of tacking
18 sutures; and she answered, and I quote, "Those sutures can fail
19 in three months or they might last a year." Do you agree with
02:10 20 that?

21 A. No, I don't agree with that at all.

22 Q. And tell the jury why you don't agree with Dr. Lahiri.

23 A. Well, I don't agree with Dr. Lahiri on that point because I
24 have many patients who have lasted many years with this
02:11 25 technique. I also believe I probably have done this many,

02:11 1 many, many more times than Dr. Lahiri. And it's worked for me.
2 You know, you do what works for you in your practice. So --

3 Q. We asked Dr. Lahiri, "When you saw Ms. Jones in
4 December" -- and she, by the way, did see Ms. Jones in December
02:11 5 of 2009 and took some photographs. Have you seen those
6 photographs?

7 A. Two thousand and --

8 Q. '9.

9 A. No, I have not.

02:11 10 Q. Okay. I'll show them to you in just a minute.

11 "When you saw Ms. Jones in December of 2009 and
12 assuming that Dr. Ciaravino in July, 2006, had sutured the
13 capsule inferiorly and laterally, is it medically probable that
14 the reason why she had lost the inframammary fold at that point
02:11 15 in time, 2009, was the fact that the sutures did not hold?"

16 And Dr. Lahiri answered, "Correct."

17 Do you agree with that?

18 A. Without seeing the photographs, no, I don't necessarily
19 agree.

02:12 20 Q. Let me ask you one more question, and then I'll show you
21 the photographs.

22 A. Sure.

23 Q. She was asked, "You would have predicted as of July, 2006,
24 the date of your surgery, if just sutures were placed
02:12 25 inferiorly and laterally, they would not hold?"

02:12 1 And she answered, "Very highly likelihood, yes."

2 Do you agree with that?

3 A. No. I mean, considering what I had to work with, I believe
4 I made a very good repair. I wish we could see the picture
02:12 5 more clearly. And -- but it wouldn't surprise me at all if it
6 didn't. Because that skin is stretched a lot. We're bringing
7 it up -- you know, I'm good; but I'm not a magician. So -- but
8 the technique works.

9 I mean, I say that there's a lot of people and I
02:12 10 can make a lot of improvement and then they -- they hold, the
11 majority of them. But they -- just like a regular breast, you
12 got gravity, you got age. Nothing lasts forever, and that's
13 what I have to tell the patients.

14 MR. HEDGES: Let's put up KBR Exhibit 70, Pages --
02:13 15 either 93 or 94, please. Let's do 93 and then leave it up for
16 a second and then do 94.

17 Can we look at 94, please?

18 BY MR. HEDGES:

19 Q. You can't see it on these copies but these are dated and
02:13 20 the date on them is December 16th, 2009. The pictures were
21 taken by Dr. Lahiri or a member of her staff.

22 Doctor, how would you describe the appearance and
23 condition of the breasts in these photographs?

24 A. Well, it's a little hard to see in the photographs. From
02:14 25 the side -- the two on the side angles, the breast looks pretty

02:14 1 good. From the -- from the center, you know, you still have
2 some asymmetry with the nipple pointing outward. You know,
3 better than -- you know, a lot better than the pre-op picture.
4 But --

02:14 5 Q. There's --

6 A. -- it's hard to comment too much without being able to --

7 Q. You say they look pretty good?

8 A. They look okay.

9 Q. Do they need further reconstructive surgery?

02:14 10 A. They -- they could -- you know, you might be able to make
11 some improvement. They don't absolutely need it. It kind of
12 becomes a subjective thing where you say, "Is there something
13 that can be improved? Is it worth undergoing surgery? You've
14 done what you can. Can you really make it better? What would
02:15 15 it take to make it better? If you have to cut away a lot of
16 skin, is that worth the scars?"

17 So, the answer is -- it's hard to answer because
18 there's always a little room for improvement. And then you
19 have to decide, "Am I ready to take that step?"

02:15 20 You could do another surgery, and you could have
21 more problems. So, that's a conversation you have to have with
22 the patient and see what you think you can do and what you
23 can't do. Like I said, there's some things that just can't be
24 fully fixed.

02:15 25 Q. Would it be a medical necessity to do reconstructive

02:15 1 surgery on the breasts we see in Pages 93 and 94?

2 A. A medical necessity? No, I would not say that.

3 Q. Doctor, just a final question or two.

4 Ms. Jones has testified that when she went home
02:16 5 following your surgery and her husband unwrapped her that she
6 cried because her breasts were still not fixed. Is that
7 somewhat surprising to you?

8 A. No. Patients are very emotional at that time and
9 they're -- like I said, they're -- they don't always know what
02:16 10 they're looking at right away and it's -- they may have
11 expectations that are beyond it.

12 I -- we don't -- I mean, we had such a crummy
13 picture of it. But I was kind of proud of the three-month
14 picture and it looked good and I would have been able to speak
02:16 15 about it more clearly if we had a clear picture.

16 If she was not satisfied with that, it wasn't
17 really conveyed to me. But I know deep in my heart, of what we
18 had to work with, that was a good repair.

19 Q. You've brought your records with you today, correct?

02:17 20 A. Yes, but it has a photographed copy. It's not the --

21 Q. Yours aren't much better than the ones we looked at?

22 A. No, like yours. I did have it e-mailed. But, you know --
23 what's the difference? I'm not on trial here. I did a breast
24 repair and --

02:17 25 Q. No, you're not.

02:17 1 A. -- we did what we could to fix it.

2 Q. You did a very good job, Doctor.

3 A. I'm not recruiting patients or anything. I'm just trying
4 to help out here.

02:17 5 Q. Doctor, thank you very much. It's good to see you again.

6 A. All right. Thank you.

7 MR. HEDGES: Pass the witness, your Honor.

8 THE COURT: Okay. Ms. Cullen?

9 **CROSS-EXAMINATION**

02:17 10 BY MS. CULLEN:

11 Q. Hi, Dr. Ciaravino.

12 A. Hi.

13 Q. My name is Sharon Cullen, and I'm counsel for Charles
14 Bortz.

02:17 15 A. Okay.

16 Q. When you were discussing the medical drawing that we had
17 here --

18 A. Uh-huh.

19 Q. -- is it your testimony that any time you have bottoming
02:18 20 out, basically the implant is going to push through the bottom
21 of the capsule and so, to the extent that you might describe it
22 as a torn capsule, what you're talking about is an opening at
23 the bottom of the capsule?

24 A. No. The capsule -- sometimes you can't even see a capsule.

02:18 25 So, more so what "bottoming out" means is that the skin has

02:18 1 stretched and the implant has moved below where -- either the
2 skin has been stretched or the implant has shifted out of
3 position, basically.

4 Q. Tell me this. Is -- is the only way to tell whether a
02:18 5 capsule, in fact, formed on a given patient is by being the
6 surgeon who goes in and looks? Can you tell -- let me try
7 again.

8 A. Right.

9 Q. Can you tell simply by examining a patient in your office
02:18 10 whether or not a capsule has formed around the implant?

11 A. Yeah. Well, if a -- if it's a firm capsule, you could
12 tell. A loose capsule, you can't really tell. So, you don't
13 really know when you -- until you go in there. That's why I
14 didn't really focus much on there is a torn capsule. I'm more
02:19 15 there's an implant out of place.

16 Q. So, the whole torn capsule issue is really kind of a
17 non-issue for those of you who know what you're talking about?

18 A. Right. It's more the repair of the capsule that we're --
19 it depends how you describe it. Because the capsule has spread
02:19 20 now to the new, you know, location.

21 Q. And is the side view on that medical drawing, that looks
22 like some sort of terrible rip in the tissue above the implant,
23 that's just -- that is not an accurate --

24 A. Right.

02:19 25 Q. -- depiction of what happened to Ms. Jones?

02:19 1 A. Right. Right. That is -- the capsule is not really the
2 significant part of this discussion. It's more that the
3 implant has moved down below where it's supposed to be, below
4 the -- what was the inframammary fold, which someone asked of
02:20 5 earlier. So, the capsule is not as important.

6 Q. You mentioned, as one of the stories of trauma that has
7 contributed to bottoming out in some of your other patients, a
8 car accident. And what I wanted to ask you was do you think
9 it's the shoulder restraint and the position of shoulder
02:20 10 restraints that sometimes cause the bottoming out for women who
11 are in car accidents.

12 A. It's -- it's hard to say. It's like where -- like I said,
13 we're not like CSI investigators and one kind of thing
14 happened. It's -- it could just as easily be a -- if I'm
02:20 15 guessing at it, it could be a muscle force. There's times when
16 people have bottomed out from repeat using of their chest
17 muscle, kind of pushes it like that. So -- (Indicating)

18 Q. So, simply the force of using your own muscle can force an
19 implant --

02:21 20 A. Or a fight or something like that.

21 Q. One month following a breast augmentation, would you be
22 able to examine a patient and make a fair determination of the
23 final outcome of that surgery at the one-month point?

24 A. You get a -- you get a pretty good handle on what your
02:21 25 potential is, yeah.

02:21 1 Q. But healing and swelling going away and all that, it's not
2 all completely perfect and --

3 A. Right. You might see it again at three months. Some
4 people you can tell right away. Some people it just takes a
02:21 5 little more time.

6 Q. Would you personally write a letter that said, "The
7 implants I just put in are perfect, the breasts are perfect,"
8 if the last time you'd seen the patient was just one month
9 post-op?

02:22 10 A. I mean, I usually don't -- I don't like to use the word
11 "perfect" on any of these because there's always something.
12 But it's all taken with -- relative in time. You know, I'd say
13 for this period of time -- when I see some people a week after
14 surgery, I'm looking at it and I go, "Oh, yeah, that's great,
02:22 15 she's in good shape. The surgery was perfect."

16 But it -- it's a progression. So, we're saying
17 it usually with, "For this period, it's looking good." I
18 personally usually see people about a week out, and then I see
19 them again at three months.

02:22 20 MS. CULLEN: Thank you very much, Doctor.

21 THE WITNESS: Thanks.

22 MS. CULLEN: No further questions.

23 THE COURT: Okay. Thank you.

24 Any redirect?

02:22 25 MR. KELLY: Yes, sir.

REDIRECT EXAMINATION

BY MR. KELLY:

Q. If you had a drug in your system and were reporting a rape,
Doctor --

MS. CULLEN: Objection.

BY MR. KELLY

Q. -- do you suppose that might --

MS. CULLEN: Objection, your Honor.

THE COURT: I guess we need to approach. Okay.

(At sidebar with all counsel)

MS. CULLEN: Mr. Kelly is going completely outside the
scope of cross-examination.

THE COURT: I wasn't sure where the question was
going.

MR. KELLY: No. He was asked if you would expect to
see pain on report the following day. I get to explain why she
didn't have pain, because she had a drug in her system. It's
not outside the scope. It's directly within the scope.

MR. McKINNEY: No, because he's not a toxicologist,
he's not --

MR. HEDGES: He's not a pain management --

MR. KELLY: He's used anesthetics.

THE COURT: I'm going to allow it.

(In open court)

BY MR. KELLY:

02:24 1 Q. Doctor, if you had a drug in your system that is known to
2 be used as an anesthetic in some places, in your system the day
3 following an assault, would you expect that that might diminish
4 reports of pain?

02:24 5 A. Yes.

6 MR. KELLY: I'm reminded that I failed to put up one
7 of the photographs I had. So, your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. KELLY:

02:24 10 Q. That's the best copy I have of the December, '09,
11 photograph, Doctor. I think that was taken by Dr. Lahiri. You
12 recall Mr. Hedges asking you about that one a few moments ago?

13 A. Yes.

14 THE COURT: You may step down, sir, if you need to see
02:24 15 it.

16 THE WITNESS: Okay.

17 BY MR. KELLY:

18 Q. The only question I really have for you about that, Doctor,
19 is would you describe this photograph as these breasts are
02:25 20 perfect.

21 A. No.

22 Q. Okay. Could further surgical revision help?

23 A. Possibly. You know, when we were looking at the other --
24 the other photograph, when we were looking at the nipple, you
02:25 25 remember the nipple was much higher above the line?

02:25 1 Q. Yes, sir.

2 A. This one is still -- still a little longer, right? So,
3 there's still -- there's still a little bit of asymmetry there
4 because -- I believe because the skin was stretched there more.
02:25 5 So, you're going to see a difference.

6 One might be able to make some improvement by
7 either retacking underneath there or maybe cutting away a
8 little bit of the skin. Because in the original surgery, all
9 we did was tack from the inside; and we still had the extra
02:26 10 skin on the outside.

11 Q. I see.

12 A. So, one thing you could do is cut away a little bit of the
13 skin and then make these more even. But to do that, you need a
14 bigger incision. So, that's where you have to say, "Is it
02:26 15 worth it or not?" Because to get, you know, an improvement,
16 you need to pick up a scar. And we have to say, "Is it worth
17 it or are you satisfied with this?"

18 Q. Gotcha.

19 THE COURT: Doctor, let me ask a naive question.
02:26 20 Nature's own breasts, the ones that people are born with, is
21 there sometimes asymmetry even in those?

22 THE WITNESS: Yes, very common.

23 BY MR. KELLY:

24 Q. You were speaking in response to Mr. Hedges' questions
02:26 25 earlier, Doctor, about trauma that causes bottoming out. Do

02:26 1 you recall that?

2 A. Yes.

3 Q. And you mentioned kids jumping on the woman's breasts or
4 car wrecks.

02:26 5 A. Yes.

6 Q. Do you recall that testimony?

7 One of the things that you have in a car wreck,
8 for instance, is air bag explosions, right?

9 A. Yes.

02:27 10 THE COURT: Can we take the photo down now?

11 MR. KELLY: Yes, sir.

12 I'm -- I'm sorry, Jamie.

13 MS. JONES: It's okay.

14 BY MR. KELLY:

02:27 15 Q. When you were talking about the bottoming out -- the case
16 of bottoming out in Jamie Leigh Jones, even with reference to
17 these car wrecks and these kids jumping and so forth, you still
18 classified it as one of the worst you've seen?

19 A. Yes.

02:27 20 Q. You were asked if there were signs of severe trauma -- I'm
21 sorry.

22 You were asked if there were signs of trauma
23 other than the severe bottoming out. Let me ask it a slightly
24 different way, Doctor.

02:27 25 Would you expect to see any signs, other than

02:27 1 severe bottoming out, to indicate trauma?

2 A. Right. No, there was no visible signs of trauma by the
3 time I see her.

4 MR. KELLY: Again, Doctor, thank you for your time.

02:28 5 MR. HEDGES: Nothing further, your Honor.

6 MS. CULLEN: Nothing further, your Honor.

7 THE COURT: You may step down, Doctor. You're free to
8 go. Thank you very much.

9 MR. ESTEFAN: We're all --

02:28 10 THE COURT: Okay. Have about a half hour left.

11 MR. ESTEFAN: We're all out of witnesses till tomorrow
12 morning, your Honor.

13 THE COURT: Okay.

14 MR. KELLY: We could dance or something, Judge.

02:28 15 THE COURT: If you don't want to stay for the program
16 or anything, if you need taxi fare, I'm happy to cover it. I
17 am really sorry to be leaving you right when all the buses are
18 not running.

19 You may go, Doctor. Thank you very much.

02:28 20 But we do continue to thank you for your service.
21 I can only imagine we're being cussed regularly at home. I'm
22 sorry.

23 Okay. Would all please rise for the jury?

24 Tomorrow at 8:30, right, everybody?

02:29 25 *(Jury not present)*

02:29

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THE COURT: Okay. Please be seated.

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THE COURT: I saw that, yeah.

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I'm told you worked out the grand jury issue, which I'm pleased to know. Have you reached any similar agreement on what we call the "me-too" employees, at least -- we're not going to hear from the ones who weren't disclosed on the witness list, but as to the ones who were disclosed?

MS. VORPAHL: Your Honor, I don't think that we've reached an agreement. We did file a conditional motion to bifurcate this morning.

MR. KELLY: And I think we've provided to defense a case, and I think we may have a copy for the Court.

THE COURT: Well, before we reach the question of whether I should bifurcate or even whether I have authority to bifurcate, my take on this is it falls within that general category that gets ever larger, of ways to extend and complicate the trial. And for that reason, I don't think it should come in.

We're here on an assault allegedly perpetrated on Ms. Jones. We're now considering whether you ought to allow testimony from women who were employed later and either are in litigation or have litigated with KBR. It seems to me each one of those, if allowed, would give us a whole new lawsuit. We would be arguing all over again about a whole other lawsuit.

MR. KELLY: Your Honor, I think they're just witnesses

0 2 : 3 1 1 to the environment, is really what -- it's not about the
2 specifics of the case but the environment and the fact that --
3 there's a couple of things going on. One of them is the
4 environment. But it certainly goes to punitive damages,
0 2 : 3 1 5 because that's one of the reasons that punitive damages are
6 awarded, is to deter conduct, to make sure that conduct is
7 improved.

8 But there's more here, and I didn't mention it
9 yesterday. I was flustered.

0 2 : 3 1 10 In fact, since we're all here and jury is out, I
11 would like to offer the Court my apologies. Yesterday I did
12 lose my temper.

13 THE COURT: No apologies necessary.

14 MR. KELLY: I feel like it is, your Honor. I just
0 2 : 3 1 15 want to offer it to the Court.

16 THE COURT: Thank you.

17 MR. KELLY: But in my frustration yesterday, I failed
18 to mention that the other issue is ratification, which we've
19 also pled in this case. And we believe that showing that KBR
0 2 : 3 1 20 continues to act in the way that they continue to act and that
21 they continue to protect the wrongdoers that work for KBR, that
22 that is evidence of ratification.

23 It also goes -- again, we can show -- and, in
24 fact, so that I don't forget, I do have some other issues I
0 2 : 3 2 25 would like to bring up to the Court -- that I think it goes to

0 2 : 3 2 1 a lot more than simply the issues that we're talking about
2 here. And if I could have just a moment. I hadn't planned to
3 argue this right away, and I'm technologically slow.

4 THE COURT: I am, too.

0 2 : 3 2 5 MR. KELLY: If I can just have a moment.

6 MR. RUNIONS: Your Honor, I don't want to interrupt
7 his argument.

8 MR. KELLY: Go ahead.

9 THE COURT: We can fill the time.

0 2 : 3 2 10 MR. RUNIONS: I assert that they didn't plead
11 ratification. They pled respondeat superior or they pled
12 vicarious liability, but they have actually not included
13 ratification in their complaint at all. Just something I
14 wanted to clear up.

0 2 : 3 2 15 And further than that, I don't think the conduct
16 that happened four years later, three years later is a
17 ratification of this act. But it's --

18 THE COURT: But we've got a preliminary problem before
19 we reach that, don't we? I assume KBR has not admitted this
0 2 : 3 3 20 conduct occurred?

21 MS. VORPAHL: No.

22 MR. RUNIONS: No, absolutely not.

23 THE COURT: That's what I mean. It's -- would enhance
24 punitive damages, it would show an environment, it would show
0 2 : 3 3 25 pattern and practice only if they really occurred, right?

02:33 1 MR. RUNIONS: Oh, absolutely. No. I think that
2 that's all true. Not only have we not admitted it, I mean,
3 we're actively litigating it. So, this stuff hasn't been
4 through discovery yet. You know --

02:33 5 MR. KELLY: Well, your Honor, I don't think that to
6 say that the only way that we can bring on evidence that KBR
7 has ratified actions and that these things have continued to
8 happen is to say that it has been previously proven. I don't
9 think there's such a requirement.

02:33 10 THE COURT: No, I'm not setting up that requirement.
11 I'm just -- in my responsibilities to manage a trial under
12 Rule -- what is it -- 611, I'm just trying to weave my way
13 through that which we absolutely have to have in the case to
14 allow you a fair trial and allow defendants a fair trial and
02:34 15 that which might bear on a tertiary point perhaps.

16 And I just -- I just -- knowing the litigious
17 nature of the parties -- and that's not a criticism. But if we
18 introduce another woman, another time, another perpetrator
19 alleged, I just see maximum possibility for elongating and
02:34 20 confusing this jury -- this process.

21 MR. KELLY: Well, your Honor, there's a case -- and I
22 have been able to get my technology up -- *Alaniz* -- spelled
23 A-L-A-N-I-Z -- v. *Zamora* --

24 THE COURT: "*Alaniz*."

02:34 25 MR. KELLY: -- *Alaniz versus Zamora Quezada* at

02:34 1 591 F.3d, 761, a Fifth Circuit opinion from 2009. And evidence
2 of these other crimes, wrongs, or acts is admissible for
3 purposes such as proof of intent, plan, motive, knowledge, and
4 absence of mistake or accident.

02:35 5 And I think it goes -- it certainly goes here to
6 knowledge and absence or mistake or accident, particularly in
7 light of the fact that we, of course, disagree with counsel and
8 believe we have adequately pled ratification. It's one of the
9 bases for which KBR is to be held liable for the acts of
02:35 10 Charles Bortz. It's not an independent cause of action, by the
11 way.

12 THE COURT: Yeah, I know that.

13 Okay. Mr. --

14 MR. RUNIONS: Well, the word itself is actually not in
02:35 15 their complaint whatsoever.

16 MR. MCKINNEY: The problem I have with all of this
17 evidence, your Honor, is it doesn't describe and isn't relevant
18 to the case now before the Court. The Court has seen copious
19 evidence, irrefutable, indisputable evidence that in the
02:35 20 aftermath, in the immediate aftermath of Ms. Jones'
21 allegations, HR swoops in, takes a statement, KBR security is
22 providing security, the State Department is informed of the
23 allegations, the State Department takes over the investigation,
24 KBR coordinates with the State Department to get Ms. Jones back
02:36 25 to the United States.

0 2 : 3 6 1 There is nothing about the facts of this case
2 that match the allegations in these me-too cases, which
3 apparently is these ladies come forward, make some kind of
4 allegation, and are fired or are terminated. There's nothing
0 2 : 3 6 5 in Ms. Jones' fact pattern that's even remotely similar to the
6 proffer being made in this case, aside from all of the other
7 concerns, such as extending the trial, having to litigate all
8 these other claims in front of this jury that's already been
9 here far longer than it needs to be to decide this issue.

0 2 : 3 6 10 I just don't see the relevance of any of that
11 kind of testimony to the known facts of this case.

12 THE COURT: Well, I do see where Mr. Kelly is going.
13 He wants to show that this was a regular practice in the area
14 and, therefore, KBR should have had an opportunity to segregate
0 2 : 3 7 15 barracks or whatever to prevent this kind of thing happening
16 again. Also, he wants to be able to show that this was a
17 regular practice of KBR, thus perhaps justifying punitive
18 damages.

19 But all these issues, to me -- the worker's
0 2 : 3 7 20 compensation issue, the State Department investigation, the
21 DOJ investigation, these other women -- all of them might in
22 some way contribute marginally to our understanding of the case
23 better; but it just comes at such a huge price. We're -- I
24 just think we're adding weeks to this case.

0 2 : 3 7 25 MR. RUNIONS: Your Honor, I agree. And I recall on

0 2 : 3 7 1 the very first day of this trial one of the things you said
2 when you were talking about the grand jury is that you had an
3 obligation to keep out unnecessary and diverting information in
4 the case. Those are the words that you used, and that's all
0 2 : 3 8 5 this does.

6 All this does is bring up things years later in
7 different locations, some of them in Iraq but different
8 locations in Iraq, different individuals, supervisors and --

9 THE COURT: I understand that.

0 2 : 3 8 10 MR. RUNIONS: -- nothing relating back to this case.

11 THE COURT: Yes, sir, your turn.

12 MR. KELLY: Your Honor, the whole idea is that KBR has
13 been able, through one method or another, to isolate these
14 individual claims over the years, to keep them separate, to
0 2 : 3 8 15 keep them quiet, and to make sure that they don't impact upon
16 one another so that the world doesn't know what they're doing.
17 That is our claim. We've made that claim in this case. We can
18 prove it, but we have to be allowed to do so.

19 And the fact that KBR doesn't want us to be able
0 2 : 3 8 20 to bring any other victims is no surprise, because that's been
21 their pattern since they set up the arbitration program, since
22 all of the things they've done to make sure that these women do
23 not come forward and have a voice. And all I want to do is
24 give them a voice, let them be heard.

0 2 : 3 9 25 The Alaniz case is right on point here, your

02:39 1 Honor. And it talks about the fact that, while it is
2 completely within the judge's discretion, if you exercise your
3 discretion to allow us to prove the environment that happens
4 here, I think the jury is not only going to see that it was
02:39 5 there, I think they will impose punitive damages against this
6 company, because that's what needs to happen to stop this
7 conduct.

8 THE COURT: There's a lot of logic to what you say,
9 Mr. Kelly, but -- and I am absolutely sympathetic to Ms. Jones'
02:39 10 right to have her day in court. That's why I refused to send
11 it to arbitration.

12 MR. KELLY: And we appreciate that.

13 THE COURT: What we're talking about now is moving
14 from a single-plaintiff, two-defendant case to the equivalent
02:39 15 of a multi-plaintiff, perhaps multi-defendant case. And then
16 we also open ourselves up, I think -- not that sexual assault
17 is ever permissible, but I think we probably open up ourselves
18 to a whole lot of statistical analysis and whether KBR's record
19 was any worse than, perhaps it was better than other large
02:40 20 companies that have foreign employees. I don't know. I mean,
21 I don't think defendant would omit that point.

22 MR. KELLY: It's not so much the record as it is the
23 treatment of the women thereafter. And one of the things -- in
24 fact, that's why I don't think we need to have mini trials,
02:40 25 your Honor.

02:40 1 The whole point, for instance -- I obviously hate
2 letting cats out of the bag, but I guess I need to.

3 For instance, Terry Westcott is going to say that
4 in Baghdad, Iraq, in 2006 she was raped; she reported that
02:40 5 rape; and in response to her reporting that rape, KBR fired
6 her.

7 THE COURT: That is not Ms. Jones' case.

8 MR. KELLY: No. But it shows the retaliatory nature
9 and the ratification of KBR over -- of the rapists over -- the
02:40 10 people that they choose to protect as opposed to the victims.

11 THE COURT: But Ms. Jones' case was just -- I mean, I
12 think on that point, Mr. McKinney is correct; there's very
13 little evidence, if any, in this case that after they -- after
14 KBR received word of what happened, they were very solicitous
02:41 15 of Ms. Jones and certainly didn't fire her. I mean, they were
16 happy to have her back.

17 MR. KELLY: Well, we -- I think there's differing
18 views on that, your Honor. I certainly understand that's
19 Mr. McKinney's view. That's certainly not ours, and it's
02:41 20 certainly not what Ms. Jones --

21 THE COURT: Tell me what particular is it incorrect?
22 You're saying that KBR would not have taken her back?

23 MR. KELLY: Well, I think that's very true. We have
24 e-mails that say that KBR did not want her back. Now they say
02:41 25 that they didn't want her back for varying reasons, but they

02:41 1 certainly say that they didn't want her back.

2 We have not put those into evidence in this case
3 because, frankly, I don't think that's particularly the issue
4 here either.

02:41 5 THE COURT: Well, if that's not the issue, then why do
6 we need to talk about these women who have been fired?

7 MR. KELLY: Well, in Jamie's case, your Honor, the
8 issue was locking her up. And I understand -- I know we had
9 this discussion the other day. In our case, the issue was
02:42 10 locking her up. I'll grant that there are two sides to that
11 story, too.

12 But from our perspective, she was locked in a
13 trailer, not allowed to leave. And she's told that story, and
14 that evidence has come before this jury. It is one form of the
02:42 15 retaliation KBR uses.

16 You heard Lorenzo Santuro talk about being locked
17 up himself. You've heard -- we had another one that talked
18 about it. I can't even recall now, but we had another witness
19 talk about that.

02:42 20 THE COURT: We have a witness that says that somebody
21 was killed and buried. We have that.

22 MR. KELLY: Well, we have a number of different forms
23 of this retaliatory nature and this ratification of bad acts by
24 KBR. One of them is firing, one of them is imprisoning.

02:42 25 Sometimes both are used. In the case of Lorenzo Santuro, both

02:42 1 were used.

2 MS. VORPAHL: Neither retaliation nor --

3 THE COURT: Let Mr. Kelly finish. You can have as
4 long as you want.

02:42 5 MR. KELLY: So, you know, the fact that we have these
6 other victims that will talk about retaliation, in whatever
7 form, is directly relevant to the fact that KBR ratified the
8 actions of its employees when they do these bad acts to the
9 detriment of the victims of the bad acts.

02:43 10 THE COURT: Ms. Vorpahl.

11 MS. VORPAHL: I just want to say one sentence, and
12 then I'm going to sit down. Neither retaliation nor
13 ratification are in this case. I'll be happy to hand you up
14 the pleadings.

02:43 15 THE COURT: We got it.

16 MS. VORPAHL: And I'm now going to sit down.

17 MR. RUNIONS: I just wanted to clarify -- just in
18 response, I did want to clarify one thing. Mr. Santuro did not
19 testify at all that he was locked up and held against his will.
02:43 20 He testified that he was put into a container, that he was able
21 to leave, to go to the PX to buy things, to go to the dining
22 facility to eat, those sort of things. None of that -- it's
23 just a misrepresentation of his testimony.

24 MR. KELLY: Please pull that transcript.

02:43 25 MR. RUNIONS: I will.

02:43 1 THE COURT: Okay. Okay. All right. Let's -- go
2 ahead.

3 MR. RUNIONS: The testimony in this case is that after
4 her report Ms. Jones was taken to a secure facility and a few
02:44 5 days later she was taken out of the country on medical leave.

6 THE COURT: Well, Mr. Kelly says there's a difference
7 of opinion on that. So, I mean --

8 MR. RUNIONS: Well, maybe. But that difference of
9 opinion is what the jury has to decide.

02:44 10 THE COURT: No. And he's saying it might be easier
11 for the jury if we allowed testimony from other witnesses who
12 had similar experiences.

13 MR. MCKINNEY: The problem is you're offering --
14 you're taking a witness from a different camp under different
02:44 15 circumstances and using that witness' testimony to prove what
16 happened on Ms. Jones' occasion. That is specifically excluded
17 by Rule 608 of the Federal Rules of Evidence. You can't use
18 one allegedly bad act at a distant place and time to prove the
19 proof or not of another bad act in another location.

02:44 20 The jury has heard all of Ms. Jones' evidence
21 about her alleged incarceration. The jury has heard all the
22 other evidence to put it in context. It's simply up to the
23 jury to decide who they believe.

24 THE COURT: Mr. Kelly quoted the language from the
02:45 25 Rules of Evidence as to showing absence of accident or

02:45 1 happenstance or whatever. I mean, I can find it. That's what
2 he says he's doing.

3 And it is true that these may involve different
4 camps and certainly different individual perpetrators, but he's
02:45 5 saying that the question is how did KBR respond.

6 And I guess he reads the evidence as strong on
7 the question of Ms. Jones being locked up.

8 MR. MCKINNEY: Well, and I understand that that's his
9 position, your Honor. But if you were going to take, let's
02:45 10 say, a bad act in Mosul and draw a line to an alleged bad act
11 in the Green Zone at Camp Hope, at a minimum this Court should
12 require proof the same managerial group, the same operative
13 group, or control group within the company was making the same
14 set of decisions. It's not --

02:46 15 THE COURT: Well, that's kind of like the employment
16 cases. I mean, a case that happened in the next office is more
17 probative than one that occurred in the next building; but you
18 can argue about whether it should be kept out all together.

19 MR. RUNIONS: But in the case of post-employment acts,
02:46 20 the post-employment cases, in our supplemental brief we pointed
21 to half a dozen or more cases in which District Courts
22 specifically excluded that because if it's post-employment,
23 that activity cannot have affected the terms and conditions of
24 this complainant's -- or this plaintiff's employment. And
02:46 25 that's really what -- the cause of action that is at stake

02:46 1 here. It's a hostile work environment, what was her hostile
2 work environment.

3 MS. VORPAHL: I'm told that somebody in the back of
4 the room has pulled up the *Alaniz* case, a case that we weren't
02:46 5 familiar with in the context of the brief we most recently
6 filed and that it appears to deal with prior bad acts. Now, I
7 haven't read the case; but I'd certainly like the opportunity
8 to --

9 THE COURT: Well, my clerk has, apparently.

02:47 10 MS. VORPAHL: -- to take a look at that. But, I mean,
11 that --

12 THE COURT: Okay. Mr. Kelly.

13 MR. KELLY: I'll say one more thing, and then I'm
14 going to sit down, your Honor. The other thing about that case
02:47 15 is -- and I read it earlier, but it's become more relevant as
16 counsel has been talking.

17 We're arguing in this case about what the motive
18 for putting Jamie in that trailer was. That is central to this
19 case. And to argue -- to not allow us to then put on evidence
02:47 20 of KBR's motive certainly is detrimental to our case in a way
21 that unfairly prejudices the plaintiff.

22 THE COURT: You're saying that what happened after
23 Ms. Jones left the area and left the company is relevant to
24 what happened to her?

02:47 25 MR. KELLY: It's relevant to prove the motive of what

0 2 : 4 7 1 happened to her, absolutely. Because they're arguing that they
2 put her in that trailer to protect her. We're arguing that
3 that's a farce, that they put her in that trailer to intimidate
4 her, to force her to give a statement, and for their own
0 2 : 4 8 5 protection, not hers. And we think we can make that case, your
6 Honor.

7 Their argument is, "We put her in this trailer to
8 protect her and, you know, we had nothing but good intentions
9 for our poor injured employee." I get that.

0 2 : 4 8 10 But the point is that's a motive question. And
11 we have these witnesses that we can bring in, we would bring
12 them in to prove that KBR's motive in dealing with a
13 complaining victim is to make sure those victims don't talk.
14 That's their motive. And that's the witness -- that's the
0 2 : 4 8 15 purpose for bringing these witnesses.

16 And anyway, I'm not going to say any more, your
17 Honor. I tend to get frustrated when I --

18 THE COURT: We all do. I understand that.

19 MS. VORPAHL: That would be a motive for retaliation,
0 2 : 4 8 20 and retaliation is not in this case.

21 MR. RUNIONS: Or false imprisonment, which is not in
22 this case.

23 MS. HOLCOMBE: The only thing I would like to add,
24 your Honor, is that motive, by the very nature of it, is what
0 2 : 4 8 25 was in the mind of KBR or its employees on the day they put her

02:48 1 in the container. Therefore, there's no way that the KBR
2 employees' future acts could have impacted their motive on the
3 date of July 28th, 2005.

02:49 4 So, even if arguably it went to motive, as
5 opposing counsel suggested, which we dispute entirely, there's
6 no way that what KBR chooses to do in 2007, 2008, 2009, 2010
7 can impact what they chose to do in 2005 on July 28.

02:49 8 THE COURT: How about for punitive damages? If we
9 have a case where an employer has been guilty of a great wrong,
10 guilty -- not "guilty" -- has been found liable for a great
11 wrong and the great wrongs continue, is that not relevant to
12 punitive damages?

02:49 13 MR. RUNIONS: Well, your Honor, there's absolutely no
14 evidence that the great wrong has continued, first off. I
15 mean, we absolutely dispute that.

16 THE COURT: Well, that's what he wanted --

17 MR. KELLY: That's why I want to put in --

18 MR. RUNIONS: We absolutely dispute that.

02:49 19 And, secondly, that that -- the wrong involved
20 there, if there was any, which we dispute, has nothing to do
21 with the wrong involved here.

22 THE COURT: Not even for punitive damages?

23 MR. RUNIONS: I don't see it for punitive damages --

24 THE COURT: Well --

02:50 25 MR. RUNIONS: -- based upon her claims that she has in

02:50 1 this case.

2 THE COURT: Pick another industry. If somebody was
3 producing soup with botulism in it and, after it was found to
4 have botulism, they kept making the same soup, you don't think
02:50 5 that's relevant to punitive damages?

6 MR. RUNIONS: I don't think that that's the fact
7 pattern that we have here.

8 MS. HOLCOMBE: And the difference, your Honor, is in
9 those future situations with -- the "botulism"?

02:50 10 THE COURT: Yeah, it can kill you quick. I'm going to
11 feed it to all of you.

12 MS. HOLCOMBE: Your Honor --

13 MR. KELLY: I stepped away, your Honor.

14 MS. HOLCOMBE: In those future cases, with botulism,
02:50 15 it will already have been decided that botulism, as you just
16 said, can kill people. Therefore, if it's continued to be
17 used, that's nothing that needs to be proved. You don't have
18 to put on additional discovery.

19 THE COURT: Well, Mr. Kelly makes a point; and it's
02:50 20 fair enough. Most times when evidence comes in in one case
21 it's not that it's been subject of a decision in another case.
22 It's just one witness volunteering to come forward and the jury
23 decides whether she is believable or not. I mean, it's not --
24 that would be a very high standard of proof if we require
02:51 25 another -- another decision decided and final before somebody

02:51 1 could testify about what happened.

2 MS. HOLCOMBE: Actually, your Honor, in a lot of those
3 cases where they exclude this exact type of evidence, it's
4 because of the trials within trials. The fact that in order to
02:51 5 properly cross-examine that person -- it's not to have a
6 greater burden. But to properly cross them on the complaint
7 that they make before our jury, it's -- would allow us -- or
8 would force us to have to continue discovery that's pending in
9 someone else's case. We'd have to bring in additional rebuttal
02:51 10 witnesses --

11 THE COURT: That's my fear. I know. But I don't know
12 if I can move from that fear to the conclusion that plaintiff
13 can't introduce witnesses.

14 I mean, I am very worried. This trial has
02:51 15 already taken far longer than we wished, far longer than we
16 thought. I know that.

17 MR. KELLY: Your Honor, all they had to do -- all they
18 had to do was take the deposition of those witnesses in this
19 case when they were noticed. They don't have to finish the
02:51 20 discovery in another case to take the deposition in this one.
21 They chose not to.

22 THE COURT: Well, if they would take the deposition at
23 the first instance, then I'm sure that would lead to other
24 depositions and other depositions.

02:52 25 MR. RUNIONS: And there are agreements in some of

0 2 : 5 2 1 these cases, your Honor, about where -- the status of those
2 cases and the fact that discovery will not go forward. I mean,
3 it's an exceptionally complicated onion, and you just start
4 peeling back the layers.

0 2 : 5 2 5 MR. KELLY: It's not that complicated. In each of
6 these cases, your Honor, I represent the other client. There
7 is nothing that would have prevented them from taking the
8 deposition had they simply asked.

0 2 : 5 2 9 THE COURT: Did you also represent the client in the
10 case that settled?

11 MS. VORPAHL: No.

12 MR. KELLY: In the Tracy Barker case, your Honor?

13 THE COURT: I don't know which one.

14 MS. VORPAHL: Teresa Westcott.

0 2 : 5 2 15 MR. KELLY: Teresa Westcott? I did not represent her
16 in that case. I currently represent her in another case.

0 2 : 5 2 17 MS. HOLCOMBE: And respectfully, your Honor -- and
18 nothing to call out Mr. Kelly; but in a case where he did
19 represent one of the witnesses we already heard from, he stated
20 that a document that he would have had access to was not
21 applicable for us to use in this case even though he had access
22 to it as her counsel in that other case. So, he kept them
23 completely separate, his representation, in that instance with
24 Ms. Frederiksen. And, so, now it's confusing, I guess, the
0 2 : 5 3 25 position he's taking.

02:53 1 MR. KELLY: Apples and oranges, your Honor. All that
2 that issue was about was whether counsel should be able to use
3 a document from that case in this case which they had not
4 produced in this case, if the Court will recall that issue.

02:53 5 And both cases have voluminous documents, and
6 they never identified that document for use in this case. That
7 was the issue in that.

8 THE COURT: Yes, ma'am. I'll let you speak and then
9 I'm going to --

02:53 10 MS. VORPAHL: We objected to that document.

11 But, Judge, let me say this. I suppose that in
12 the punitive damage arena, if an -- and I'm trying to think
13 what the predicate findings are, and I don't recall exactly.
14 But they would be in the first phase of the trial.

02:53 15 I suppose that -- this evidence, if we got to the
16 issue of punitive damages and if there was evidence that bore
17 on the issue of punishment of KBR, this evidence might become
18 relevant as would our defensive evidence. I mean, then we'd
19 set about having these mini trials over whether KBR had
02:54 20 continued to do something punishable.

21 THE COURT: I would have preferred, actually, if
22 someone had severed the actual from the punitive. We've done
23 it both ways. And the problem is, if you don't mention
24 punitives in the final jury instructions and the jury does come
02:54 25 back with a finding of liability, the jury is very annoyed to

02:54 1 then learn they have to stay for another trial. That is a --
2 that's not your problem, but it's my problem.

3 But I -- this is a very difficult circumstance
4 where we're talking about letting in information that, in my
02:54 5 mind, only bears on punitives.

6 MS. VORPAHL: I think that's exactly right. And I
7 will sit down.

8 THE COURT: I'm going to have a word with my
9 colleague. Please be patient.

03:05 10 *(Sotto voce discussion at bench with court staff)*

11 THE COURT: Okay. I am sensitive to how this case is
12 going to look on appeal. I don't want to -- no -- no offense
13 to anyone, but I don't want to try it again.

14 I think we need to at least converse, as we have
03:05 15 done before, with these witnesses and find out what it is they
16 might say, just like we did with that one truck driver, whom I
17 ultimately found had nothing to say. And that would at least
18 explain to the Court reviewing this later what -- the decisions
19 I reached.

03:06 20 And I would suggest you find the time -- we can
21 talk to them telephonically. I assume none of them are in
22 town, right?

23 MR. KELLY: One of them for sure. I think two of them
24 may be in town. And one of them is in Austin. So, they're not
03:06 25 far.

03:06 1 THE COURT: Well, we can do it telephonically or we
2 can do it in person. But it will be clearer to me and clearer
3 to the reviewing Court why we did what we ultimately do. And I
4 don't know what that is yet.

03:06 5 On the *Alaniz* case, it really is, I think, very
6 distinguishable. There the perpetrator was the same
7 individual, not just the same company. It was the same
8 individual.

9 Okay. I'm going to have to go tend to things I
03:07 10 need to tend to. Is there anything else you can --

11 MR. MCKINNEY: Judge, I have two things off topic.
12 One, when Dr. Scarano comes, could you ask him -- and we will
13 be happy to provide the labor, do the heavy lifting; but I
14 would like the jury to be able to visualize his entire file to
03:07 15 appreciate the enormous amount of information.

16 THE COURT: We will convey that to Dr. Scarano that's
17 your request. I'm not going to order him to do that.

18 MR. MCKINNEY: No. It's a request. And we're happy
19 to provide the labor and the transportation.

03:07 20 The second point is in counsel -- we're
21 working -- it may not look like it, but we actually do work
22 together on some issues.

23 THE COURT: Good.

24 MR. ESTEFAN: It's usually when you're out of the
03:07 25 room, Judge.

03:07 1 MR. MCKINNEY: And if we run out of witnesses tomorrow
2 or the next day -- there are legitimate scheduling issues, if I
3 may be so bold, it might not be a bad time to start talking
4 about the charge so we don't spend a day with the jury --

03:07 5 THE COURT: You've already talked about that or you
6 have not?

7 MR. MCKINNEY: No. It would be something we would
8 take up with the Court.

9 THE COURT: No. Have you talked about that among
03:08 10 yourselves yet?

11 MR. MCKINNEY: We have not.

12 THE COURT: No, I'm mindful of that. It's always
13 tricky whether we start too early, in which the case -- the
14 issues may evolve, or we start too late, in which case we have
03:08 15 a long delay. But that would not be an inappropriate use of
16 downtime, I agree.

17 *(Discussion off the record)*

18 MR. MCKINNEY: Are we through for the day, your Honor?

19 THE COURT: We are.

20 *(Proceedings recessed for evening)*

21 * * * * *

COURT REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled cause.

Date: June 28, 2011

/s/ Cheryll K. Barron

Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter

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